

State of Kansas  
Department of Health and Environment  
Division of Environment  
Bureau of Water

Draft Update to the  
Intended Use Plan  
for  
The Kansas Water Pollution  
Control Revolving Loan  
Program

Final State Fiscal Year 2012

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June 10, 2011  
Updated August 29, 2011  
In Response to Comments  
From EPA Region 7  
Updated February 29, 2012  
To Present Projects Selected to  
Receive NPS Green Innovative Funding

## Intended Use Plan

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## I. INTRODUCTION

Section 606(c) of the Water Quality Act of 1987 requires the states to prepare an annual plan to identify the intended uses of the capitalization grants and other moneys within the states' revolving funds.

The primary purpose of this Updated Intended Use Plan (IUP) is to identify the intended uses of the Kansas Water Pollution Control Revolving Fund (KWPCRF) FY 2012 and remaining FY 2011 available monies, including projects selected to receive funding for non-point source pollution control "green innovative" design projects. The secondary purpose of this IUP is to supplement the Kansas Capitalization Grant application with prospective projects and program information.

This Final IUP document also provides information and discusses the recent changes to the Kansas Water Pollution Control Revolving Fund (KWPCRF) as a result of the FFY 2010, FFY 2011, and FFY 2012 federal appropriations legislation. The KWPCRF had operated for over two decades as a simple and straight forward low interest loan program to municipalities to finance construction improvements. The recent "economic stimulus" funding efforts through the American Recovery and Reinvestment Act (ARRA) are nearly completed with nearly all ARRA funds paid to projects in Kansas. The FFY 2010, FFY 2011, and FFY 2012 federal appropriations laws have provided additional funding to the KWPCRF, while also dictating additional administrative requirements, new deadlines, and new policies to encourage different types of projects to be funded.

### FFY 2012 and Remaining FFY 2011 Appropriations

The FFY 2010 federal appropriation provided an additional \$18,391,000 to the KWPCRF, and these funds have been provided as loans to projects. KDHE has "reserved the right" to utilize 4% of the 2010 Cap Grant amount, \$735,640, for administration costs, from this or future cap grants. The FFY 2011 federal appropriation has provided an additional \$13,328,000 to the KWPCRF. Again, KDHE "reserves the right" to utilize 4% of the 2011 Cap Grant amount, \$533,120, for administration costs, from this or future cap grants. The FFY 2012 federal appropriation has been passed into law and is expected to provide approximately an additional \$13,377,000 to the KWPCRF. KDHE will again "reserve the right" to utilize 4% of the 2012 Cap Grant amount, approximately \$535,000, for administration costs. The appropriations bills require the additional administrative requirements for Davis/Bacon prevailing wages, an emphasis to direct at least 20% of the funds (a minimum of \$2,665,600 from the 2011 Cap Grant and a minimum of \$2,675,400 from the 2012 Cap Grant) to "green" infrastructure designs, and the requirement to provide an "additional subsidy" (principal forgiveness) when funding new projects. The total amount of principal forgiveness required from the 2011 Cap Grant must be a minimum of \$1,235,051 and cannot exceed a maximum of \$4,116,837. The total amount of principal forgiveness required from the 2012 Cap Grant must be approximately a minimum of \$802,620 and cannot exceed approximately a maximum of \$1,377,000. The FFY 2010, FFY 2011, and FFY 2012 federal appropriations bills do NOT include the administrative requirements for Buy American or jobs created estimates reporting.

EPA has clarified the Davis/Bacon requirements apply to any loan dated after October 30, 2009 (the date the 2010 appropriations law was passed) regardless of the source of funding within the SRF. All new loans will include Davis/Bacon requirements, reference Attachment 4 and Attachment 5 of Appendix E.

Twenty percent of the FFY 2011 allocation, \$2,665,600, is being provided to nonpoint source pollution control "green innovative" projects to help assure an adequate amount of projects are funded to fully meet the EPA "green project reserve" requirement.

The amount of funding provided by the Congressional appropriations bills for principal forgiveness to the Clean Water SRF programs has been steadily decreasing over the years. The concept of principal forgiveness began with the ARRA funding in FFY 2009, and federal law required a minimum of 50% and a maximum of 100% of the federal ARRA funding be provided as principal forgiveness. Approximately 64.5% was provided. The FFY 2010 appropriation to the Clean Water SRF program required a minimum 20% and a maximum 49.92% of the federal funding be provided as principal forgiveness. The full 49.92% will be provided. The FFY 2011 appropriation to the Clean Water SRF program required a minimum 9.27% and a maximum 30.88% of the federal funding be provided as principal forgiveness. The full 30.88% will be provided. Based on the federal appropriation law, the FFY 2012 appropriation to the Clean Water SRF program will require a minimum of about 6% and a maximum of about 10% of the federal funding be provided as principal forgiveness. The FFY 2013 administration budget has been released, and we estimate Kansas will receive about \$10.7M for the FFY 2013 Cap Grant, but the anticipated requirement for principal forgiveness is a required minimum of 0% (zero) and a maximum of about 4.5%. These numbers are summarized as follows:

<u>FFY</u>	<u>Cap Grant</u>	<u>Maximum P. F.</u>	<u>Minimum P. F.</u>
ARRA	\$35,374,200	\$35,374,200	\$17,787,100
2010	\$18,391,000	\$ 9,181,294	\$ 3,678,200
2011	\$13,328,000	\$ 4,116,837	\$ 1,235,051
2012 (Est.)	\$13,377,000	\$ 1,337,700	\$ 800,000
2013 (Est.)	\$10,700,000	\$ 478,000	\$ 0

Due to this obvious trend and the intent of EPA and Congress, KDHE will no longer provide principal forgiveness in new Loan Agreements dated after February 23, 2012. KDHE will make every effort to provide the amounts of principal forgiveness as indicated in prior loan agreements. No one can predict the future, and if by some chance EPA and Congress provide additional appropriations with required principal forgiveness in the future, then after all current principal forgiveness obligations of prior loan agreements have been met, KDHE will provide principal forgiveness to new loans dated after February 23, 2012 in accordance with the established procedures in Appendix E of this IUP. The additional principal forgiveness will be provided to Loan Agreements in the order as the complete applications were received.

Also regarding principal forgiveness, KDHE will fund all “traditional” wastewater project loans funded after October 30, 2009, and prior to February 23, 2012, in the following manner subject to the availability of funds:

- All loans continue to receive an interest rate established in accordance with K.A.R. 28-16-113.
- All loans which are provided to projects that do NOT also receive CDBG grant funding receive an “additional subsidy” through principal forgiveness in the amount of 15% of total loan amount, excluding interest during construction and service fee charges during construction, subject to the availability of the funds from the FFY 2010, FFY 2011, FFY 2012, and FFY 2013 Cap Grants. The Cap Grants are the only source of funding that can provide principal forgiveness from the KWPCRF loans. As the Cap Grant amounts are declining in future years principal forgiveness is not being provided in new loan agreements. Any loan that “matches” CDBG grant funding for a project cannot also receive principal forgiveness from the KWPCRF loans.
- Any project providing a “green component” in the design will receive an additional 25% “additional subsidy” through principal forgiveness (40% total for qualifying “green component” costs) for the as-bid construction cost of the “green components” of the design and the pro-rated share of design and construction phase engineering including construction oversight, subject to the availability of the funds from the FFY 2010, FFY 2011, FFY 2012, and FFY 2013 Cap Grants. The Cap Grants are the only source of funding that can provide principal forgiveness from the KWPCRF loans. As the Cap Grant amounts are declining in future years principal forgiveness is not being provided in new loan agreements. Any loan that “matches” CDBG grant funding for a project cannot also receive principal forgiveness from the KWPCRF loans.
- KDHE will make every effort to provide the amounts of principal forgiveness as indicated in loan agreements with effective dates prior to February 23, 2012. If additional principal forgiveness amounts are provided by Congressional appropriation in the future, these funds will be first used to fully provide principal forgiveness funding to existing loan agreements with effective dates prior to February 23, 2012, as necessary. If additional principal forgiveness amounts are provided by Congressional appropriation in the future, beyond the needs of existing loan agreements with effective dates prior to February 23, 2012, these principal forgiveness funds will then be provided to subsequent loan agreements in the order of the effective dates of the loan agreements and in accordance with the terms and conditions presented above.

This IUP is based on a total of \$27.5M fund amount available for direct loans from the remaining 2011 Capitalization Grant funds, the future 2012 Capitalization Grant, the past sale of State Match and Leveraging Bonds, and excess repayments of loan principal and interest as of February 1, 2012. Also, the future sale of leveraging bonds has the capacity to fund an additional \$150M of KWPCRF loans. This includes the 2011 Capitalization Grant of \$13,328,000 and the upcoming 2012 Capitalization Grant of \$13,377,000. The previously provided State Match of \$2,665,600 to the 2011

Cap Grant has been fully utilized in payments to projects. KDHE has provided the entire \$2,665,600 for the 2011 State Match from the December 2010 bond sale, and has also provided \$1,059,555 from this December 2010 bond sale for State Match to the 2012 Cap Grant. Therefore, as the required State Match to the FFY 2012 Cap Grant is \$2,675,400, the remaining \$1,605,845 will be provided by the future sale of additional State Match bonds. Also, the Kansas Department of Health and Environment (KDHE) continues to receive repayments, with the interest portion dedicated to repay State Match borrowing, the interest and principal repay Leveraging Bond borrowing, and the remaining monies are placed in the Fund and available for new Loans. The total anticipated costs of projects wishing to proceed with KWPCRF low interest loans continues to exceed available monies, therefore, KDHE is planning a future sale of additional State Match and leveraging bonds.

In accordance with EPA guidance regarding the application of cash draw proportionality requirements for the Clean Water State Revolving Fund Program, and with reference to the August 26, 2011, EPA memo "Clarification of Cash Draw Rules for Leveraged SRF Programs", the KWPCRF has provided and disbursed the entire State Match for the FFY 2010, FFY 2011, and a portion of the FFY 2012 Cap Grants. Therefore, as the entire State Match has been disbursed first, the federal funds will be drawn for 100% of an eligible incurred construction cost.

With this Draft Update to the State Fiscal Year 2012 IUP, KDHE is continuing to pursue the funding of the Non-Point Source Pollution Control Projects. The Master Financing Indenture (MFI) developed in conjunction with the December 2010 bond sale now allows the KWPCRF to provide low interest loan funding to non-governmental borrowers and also to provide principal forgiveness to loan agreements in the normal course of business.

KDHE has employed financial advisors and legal counsel to implement the feasibility of continued "leveraging" in the Kansas Water Pollution Control Revolving Fund. "Leveraging" is the process of marketing revenue bonds for State Match and additional funds beyond the minimum 20% required by EPA, up to as much as the market will bear. KDHE has been successful in marketing Leveraging Revenue Bonds many times in the past and will sell additional leveraging bonds in the future.

Congress continues to debate legislation and revise the SRF program, which may include additional funding for the Clean Water State Revolving fund program. The KWPCRF received a Cap Grant of \$13,328,000 from the FFY 2011 appropriation and has applied for a Cap Grant of \$13,377,000 from the FY 2012 appropriation. As additional funding is received, it will first be utilized to fund the additional projects included on the Table I, and then for projects on the "Contingency List", and then other projects picked up from the Priority List. Any additional selected projects will be presented in a future Update to this Intended Use Plan.

## II. LIST OF PROJECTS

With the total projected fund amount currently available for the KWPCRF program of \$177.5M as of February 1, 2012, KDHE is proposing to assist communities and the administration of the Kansas Water Pollution Control Revolving Fund. Table 1 lists projects selected for funding in the near future which includes many projects carried over from the "Intended Use Plan for the Kansas Water Pollution Control Revolving Loan Program – Final State Fiscal Year 2012 – June 10, 2011 - updated August 29, 2011 in response to comments from EPA Region 7." The projects for Bonner Springs, and Pittsburg are expected to qualify for Green Project Reserve (GPR) status. Additional Non-Point Source Pollution Control Management Plan projects which qualify for GPR status have been selected to receive funding and are presented in this Update to the Intended Use Plan. Table I also includes a "Contingency List" of projects that may receive the FFY 2012 and future funding if chosen projects receive low bid prices or are delayed, and will be first priority for FFY 2013 funding. Projects selected to receive funding from FFY 2013 appropriation will be presented in a future Update to this Intended Use Plan or in the future SFY 2013 IUP.

The interest rates on all loans are and will continue to be determined in accordance with K.A.R. 28-16-113. In conformance with the intent of the State Legislation establishing the KWPCRF, KDHE will insure a minimum 10% of the total "Basic Program" and "Leveraging Program" monies will be made available to Municipalities of 5,000 population or less.

In accordance with K.A.R. 28-16-113, the KWPCRF interest rate is set at 60% of the previous three month's average Bond Buyers 20 Year Bond Index. All loans executed after October 30, 2009 and prior to February 23, 2012 excluding any loans that provide match to CDBG grant funding, will receive 15% principal forgiveness based on the total design and construction phase engineering cost and the construction contract amount listed on the bid form of the successful bidder, based on the availability of funds. Additionally any Green component or Green Traditional project funded in this time frame will receive 25% principal forgiveness based on the total design and construction phase engineering cost and the construction contract amount of the "green components" listed on the bid form of the successful bidder, based on the availability of funds. For traditional projects that contain Green components but are not considered Green projects in their entirety, principal forgiveness will be based on the cost of the Green component amount listed in the bid form of the successful bidder.

Although any eligible recipient of assistance from the KWPCRF may receive the required additional subsidization, EPA's guidance encourages states to give additional subsidy to systems that could not otherwise afford a KWPCRF loan. These communities are generally referred to as disadvantaged communities.

EPA guidance allows the state wastewater SRF programs to independently develop affordability criteria and define disadvantaged systems. These disadvantaged systems are then eligible for loans with principal forgiveness or negative interest rate loans which would in effect give away a portion of the federal grant. No final affordability criteria guidance have been developed for the KWPCRF program. The KWPCRF is structured to use bond proceeds and excess earnings for funding additional loans and to secure the sale of additional bonds for the KWPCRF.

The total estimated cost for projects listed in Table I for 2011 and 2012 are 64.7 percent of the available fund projection. This "over listing" approach is used to assure that adequate projects are readily available to proceed to utilize funding available from the KWPCRF. Project readiness will determine the assistance order and if a selected project for 2011 or 2012 funding is delayed an additional project can be funded from the "Contingency List". Also the "Contingency List" represents the initial selection of projects to receive FFY 2013 funding and funding from the sale of additional leveraging bonds. Please note, in past years the policy was to fund all projects on Table I, and to carry unfunded projects forward onto the next year's IUP. Projects were retained on the IUP until funded by the KWPCRF, funded by another source, or the wastewater treatment issue was otherwise resolved. The number and cost of wastewater improvement projects currently necessary and pursuing KWPCRF low interest loan financing continues to exceed available funding and so the sale of leveraging bonds will be pursued in the future as and when necessary.

The added number of required improvement projects is the direct result of new and more stringent regulatory requirements including the 1992 EPA Part 503 Domestic Sewage Sludge Reuse and Disposal regulations, revisions to the Kansas Surface Water Quality Standards regulations, and also continuing growth and replacement needs. The primary source of new funding for KWPCRF loans is Capitalization Grants from EPA. Placing a project on the IUP is the commitment funds are available to that project, and KDHE is making every effort to meet that commitment.

The projects included on Table I below include many small projects in communities with less than 5,000 population as directed by the enabling state legislation. Funding has not been available for several larger cost projects due to reduced Federal Grants and reduced interest earnings of the KWPCRF. The projects are listed in alphabetical order in Table I, and in Priority Order in Appendix A.

To help assure the EPA requirement for 20% of the federal funding be provided to projects qualifying for the EPA Green Project Reserve, \$2,665,600 of the 2011 Cap Grant was set aside to fund Non-Point Source Pollution Control Projects through the BOW Watershed Management Section. The projects selected to receive these funds are presented below. For FFY 2012, due to the significantly reduced amount of federal funds available to provide principal forgiveness, no federal funds are set aside to fund Non-Point Source Pollution Control Projects.

Preliminary review for the proposed projects listed in Table I indicates no need for requiring the preparation of an Environmental Impact Statement (EIS) for any of these projects.



TABLE I  
KWPCRL PROJECT FUNDING

Remaining Projects Selected to Receive 2010 Funding

	<u>Municipality</u>	<u>Proj. No.</u>	<u>Proj. Desc.</u>	<u>Est. Loan Amt.</u>
1.	El Dorado (Funded)	1827 01	Alt. Energy (GPR)	2,106,252
2.	Independence (SE PS) (Funded)	1915 01	PS Repl	4,000,000

Projects Selected to Receive FFY 2010 Funding for NPS Pollution Control

1.	Glacial Hills RC & D Holton (Funded)	1881 01	Urban Stm. Mgmt.	\$ 191,310
2.	Pott. Co. (Funded)	1860 01	Urban Stm. Mgmt.	535,212
3.	Glacial Hills RC & D Delaware River (Ph 3) (Funded)	1923 01	Comp. Rip. Rehab.	756,000
4.	Flint Hills RC & D (Funded)	1921 01	Comp. Rip. Rehab.	764,300

Projects Selected to Receive 2011 Funding

1.	Assaria * (Match CDBG) (Appl. Rec'd)	1903 01	WWTP Impvts.	505,020
2.	Bonner Springs	1824 01	Eff. Reuse/WWTP (Potential GPR)	351,000
3.	Chanute (Match CDBG) (Funded)	1930 01	Sewer Repl.	360,428
4.	Colony * (Match CDBG) (Funded)	1939 01	Sewer Rehab.	274,725
5.	Edgerton *	1926 01	WWTP & Ints.	13,643,000
6.	Ensign * (Match CDBG)	1935 01	Lagoon Rehab	340,705
7.	Grainfield * (Funded)	1931 01	Lagoon Rehab	903,594
8.	Hill City * (Funded)	1801 01	WWTP Repl. (Green)	4,999,110
9.	Iola (Ph I)	1932 01	PS & Sew Rehab	628,000

10.	Jo. Co. Lone Elm (Funded)	1900 02	GP & LPS Coll. (GPR)	1,452,921
11.	Jo. Co. Lake Gardner (Funded)	1920 01	GP & LPS Coll. (GPR)	8,131,778
12.	Leon * (Match CDBG) (Appl. Rec'd)	1914 01	Sewer Rehab	752,219
13.	Lincolnvill (Match CDBG) (Appl. Rec'd)	1929 01	Lag. & Sew Rehab	245,275
14.	Marion * (Match CDBG) (Funded)	1924 01	Sewer Rehab	507,500
15.	Pittsburg	1925 01	Coll. Sys. SCADA (GPR)	250,000
16.	Plains *	1936 01	Lagoon Rehab	656,191
17.	Robinson * (Match CDBG) (Funded)	1937 01	Sew. & Lag Rehab	123,928
18.	Valley Falls	1927 01	WWTP Impvts (Green)	500,000
19.	Woodston *	1770 01	WWTP Rehab. (Green)	<u>951,000</u>

Total Remaining to be Funded \$18,822,410

Projects Selected to Receive FFY 2011 Funding for  
NPS Pollution Control

1.	Glacial Hills RC&D Wolf River	1942 01	Comp. Rip. Rehab. (GPR)	\$ 153,264
2.	Kansas Water Office Smoky Hill River	1943 01	Comp. Rip. Rehab. (GPR)	\$ 300,480
3.	Kansas Water Office Cottonwood River, Ph. 2	1944 01	Comp. Rip. Rehab. (GPR)	\$ 1,310,652
4.	University of Kansas	1945 01	Urban Strm. Mgmt. (GPR)	\$ 450,000
5.	Glacial Hills RC&D Delaware River, Ph. 4	1946 01	Comp. Rip. Rehab. (GPR)	<u>\$ 451,204</u>

Total Remaining to be Funded \$ 2,665,600

Projects Selected to Receive 2012 Funding

<u>Municipality</u>	<u>Proj. No.</u>	<u>Proj. Desc.</u>	<u>Est. Loan Amt.</u>
1. Alden *	1766 01	PS Repl.	100,000
2. Alton *	1947 01	WWTP Impvts.	100,000
3. Arlington *	1771 01	I/I Corr.	300,000
4. Atchison (Dis)	1787 01	WWTP Impvts.	2,500,000
5. Baxter Springs * (Match CDBG)	1755 01	WWTP Impvts.	700,000
6. Chapman*	1948 01	Eff. Irrig. Reuse (GPR)	150,000
7. Coolidge *	1703 01	WWTP Impvts.	400,000
8. Cottonwood Falls *	1949 01	WWTP Impvts.	400,000
9. Douglass *	1788 01	I/I Corr.	300,000
10. Enterprise *	1922 01	WWTP	1,000,000
11. Eudora *	1938 01	PS Upgrade	800,000
12. Fall River *	1933 01	Lagoon Rehab	200,000
13. Goodland *	1383 01	WWTP Impvts.	2,500,000
14. Horton *	1665 01	WWTP Impvts.	1,727,300
15. Iola (Ph II)	1932 02	Sewer Rehab	2,023,700
16. K.C. – CSO (Ph 2)	1596 02	CSO Separation	15,000,000
17. K.C. Plt #1 (Dis)	1730 01	WWTP Impvts	7,775,000
18. Leavenworth (Dis)	1729 01	WWTP Impvts.	6,648,000
19. Liberal	1391 01	WWTP Impvts.	12,000,000
20. Minneapolis	1951 01	Sewer & Lagoon Rehab	500,000
21. Moundridge *	1950 01	WWTP Impvts.	800,000

22.	Natoma *	1714 01	WWTP Impvts.	1,100,000
22.	Newton (Ph. 2)	1747 03	WWTP Impvts. (Potential GPR)	26,600,000
23.	Olathe (H.S. Des.)	1815 01	Design WWTP Rehab	550,000
24.	Osage City*	1667 01	I/I Corr./Cont	1,000,000
25.	Ottawa E & NE Ints.	1928 01	Ints.	4,707,513
26.	Reno Co. SD #202*	1952 01	WWTP Impvts. (Potential Green)	901,000
27.	Rush Center *	1400 01	WWTP Impvts. (Green)	1,671,300
28.	Sabetha	1953 01	I/I Corr./Cont.	2,000,000
29.	Silver Lake *	1934 01	PS Repl.	697,400
30.	Spivey *	1715 01	I/I Corr.	100,000
31.	Sublette *	1954 01	WWTP Impvts.	200,000
32.	Ulysses	1955 01	WWTP Impvts.	500,000
2012 Interim Total				\$ 95,951,213
Total Remaining to be Funded				\$114,773,641

Funds Available for New Loans as of February 1, 2012 Including 2012 Cap Grant and  
Funds Available from Repayments \$177.5 M

\* 5000 or Less Population

\*\* \$ 64.7% of Program Available Funding of \$177.5 M as of February 1, 2012

#### List of Acronyms and Abbreviations

Proj. No.	- Project Number
Proj. Desc.	- Project Description
Est. Loan Amt.	- Estimated Loan Amount
CDBG	- Community Development Block Grant
WWTP	- Waste Water Treatment Plant
Impvts.	- Improvements
Eff. Reuse	- Effluent Reuse
GPR	- Green Project Reserve, a Federal Policy
Green	- Qualifying for Additional Principal Forgiveness, Under the KDHE policy

PS Repl	- Pump Station Replacement
Sewer Rehab	- Sewer Rehabilitation
GP	- Grinder Pumps
LPS	- Low Pressure Sewers
Ints.	- Interceptors
SCADA	- Supervisory Control And Data Acquisition System
I/I Corr.	- Infiltration/Inflow Correction
Urban Stm. Mgmt.	- Urban Stormwater Management
Comp. Rip. Rehab	- Comprehensive Streambank and Riparian Rehabilitation

The KWPCRF must designate in the Intended Use Plan a project or group of projects equal to the capitalization grant amount that will be required to submit an audit that complies with the Single Audit Act requirements. Any loan that receives funding directly from the FFY 2010, FFY 2011, or FFY 2012 capitalization grant will be required to comply with the Single Audit Act requirements.

### III. GOALS OF THE STATE REVOLVING FUND

#### A. Long-term Goals

1. To maintain a self-supporting revolving loan program through the Kansas Water Pollution Control Revolving Fund in order to improve and protect water quality and public health.

Planned Actions: KDHE Staff have routinely reviewed this issue in the past. In the future KDHE in conjunction with KDFA and the legal and financial consultants to the KWPCRF will continue to review the long-term capabilities of the KWPCRF to meet all financial obligations of the leveraged borrowings and also generate adequate service fee revenue to support the program in the future.

2. To establish and manage an effective and efficient State Revolving Fund Program, provided that it's revolving nature is assured in perpetuity.

Planned Actions: KDHE in conjunction with KDFA and the legal and financial consultants to the KWPCRF have always reviewed this issue in the past in conjunction with each leveraging bond issue. These efforts will continue in the future with every leveraging or State Match bond issue.

KDHE in conjunction with the Kansas Department of Administration has contracted for annual independent audits of the KWPCRF, and will continue into perpetuity. The availability of the Independent Auditors Report is scheduled to allow the Audit Report to be included in the Annual Report.

3. To provide the type and amount of assistance most advantageous to local communities consistent with assuring the long-term purchasing power stability of the fund.

Planning Actions: Continue the current program, which has proven to be useful and successful.

4. To continue to fund water quality improvement, sludge handling improvements, and public health protection projects on a priority basis as presented in the Project Priority List.

Planned Actions: Continue the current program, which is proving successful in resolving water quality impairments, improving compliance with EPA Part 503 regulations, and improving the sanitary conditions of Kansas streams.

5. To support implementation of Water Quality improvements plans as presented within the Kansas Water Plan and TMDL plans written by KDHE and approved by EPA.

Planned Actions: The KWPCRF hopes to increase activity to implement Water Quality improvement plans by utilizing the Environmental Initiatives Fund opportunity to fund Non-Point Source pollution control projects. Funding for water pollution reduction projects as recommended by TMDL plans is being accomplished and will continue into the future.

6. To provide funding to non-traditional borrowers for water quality improvement and public health protection projects, including non-point source pollution control projects.

Planned Actions: In the past, the Environmental Initiatives Fund had been established, and utilized to fund projects for the non-traditional borrowers and projects. Also, the EIF was utilized to provide the ARRA funding and a portion of the FFY 2010 funding to projects which allowed principal forgiveness to be provided. The new Master Financing Indenture adopted December 2010 allows non-traditional borrowers to receive loans and allows principal forgiveness in new loans.

#### B. Short-term Goals

1. To provide financial assistance to water quality improvement projects for discharge to streams and water bodies within "high quality watersheds" consistent with the provisions of the Project Priority System.

Planned Actions: Continue the successful implementation of this goal.

2. To provide financial assistance for sewerage facilities to municipalities with population less than 5,000.

Planned Actions: Continue the successful implementation of this goal.

3. To assure compliance with Water Quality Standards and effluent limitations through encouraging construction of sewerage improvements in support of KDHE Permitting and Enforcement activities.

Planned Actions: Continue the successful implementation of this goal.

4. To encourage municipalities to use the KWPCRF for solving problems related to public health protection, water quality improvement, sludge handling improvements, and wastewater treatment facilities compliance through the construction of sewerage projects.

Planned Actions: Continue the successful implementation of this goal.

5. To assure compliance with domestic sewage sludge reuse criteria and disposal practices through construction of any necessary sludge handling improvements to comply with the 40 CFR Part 503 EPA regulations.

Planned Actions: Continue the successful implementation of this goal.

6. To develop and implement a linked-deposit procedure to fund projects with non-traditional borrowers.

Planned Actions: KDHE will reconsider the efforts necessary to implement this goal, and renew the effort to develop a linked-deposit procedure.

#### IV. INFORMATION ON ACTIVITIES TO BE SUPPORTED

Information pertinent to each proposed KWPCRF project to be funded is in Appendix A. As detailed in the Capitalization Grant Application, the State of Kansas intends to use 4% of the federal funds for administering the KWPCRF. A projected payment schedule is listed in Appendix B. Appendix C is a Multi-Year Payment Schedule of Actual and Projected Increases in the SRF Automated Clearinghouse. Appendix D is the sources and Uses of Funds Summary, and Appendix H is the Loan Administration Fees summary.

Interest in use of the SRF continues as shown by the number of loan agreements and the list of projects on Table I. The EPA Domestic Sewage Sludge Reuse and Disposal regulations continue to encourage sludge handling improvement projects, typically completed with a comprehensive project for a mechanical wastewater treatment facility. KDHE continues to adopt revisions to the Surface Water

Quality Standards regulations, which are requiring major capital outlays for numerous treatment plant improvement projects. The funds available to the KWPCRF could not meet these projected needs, and so KDHE proceeded to both "leverage", or increase the percentage of State funding in the Program by issuing additional revenue bonds, and also review the status and timing of projects to be included in Table I.

KDHE, in conjunction with the Kansas Development Finance Authority (KDFA), conducted extensive financial and legal analysis of the concept of again "leveraging" additional monies for the Kansas SRF Program, i.e. borrowing more than the basic required 20% State Match to the EPA Capitalization Grant. The KWPCRF has sold Leveraging Bonds many times in the past and will sell additional Leveraging Bonds in the future as the need arises. Even with efforts to maximize leveraging borrowing of the KWPCRF, many larger projects associated with growth cannot be funded by the KWPCRF, and are not included in this IUP.

## V. CRITERIA AND METHODS FOR DISTRIBUTING FUNDS

The Kansas Department of Health and Environment has developed a Draft FFY 2012 Project Priority Ranking System and a Draft FFY 2012 Project Priority List. These documents provide a clear, objective order of ranking for wastewater facilities projects. Appendix E is by reference the Draft FFY 2012 Project Priority Ranking System and Appendix F is by reference the Draft FFY 2012 Project Priority List.

The funding order of projects may not be identical to the project ranking in the priority list. Projects that will meet the definition of the EPA Green Project Reserve (GPR) are an over-riding factor however the general order of the priority ranking is followed. There are several reasons "lower ranked" projects from the Priority List are included on the IUP. This is primarily due to the requirement up to 10% of monies in the fund must be made available to Cities of less than 5,000 population (Reference Table I projects noted with an \*) and the requirement to place 20% of the FFY 2011 and FFY 2012 funding into EPA GPR designs. Past KDHE policy was to fund all projects on Table I and so any project included on the Final IUP Table I which did not receive funding this fiscal year would typically be carried over to next year's IUP. Table I has been revised to insure timely use of monies, and funding in priority order. All proposed projects are listed in the priority list.

## VI. ASSURANCES AND SPECIFIC PROPOSALS

The Kansas Department of Health and Environment provides the necessary assurances and certifications in detail within the Operating Agreement. The Operating Agreement also includes the following requirements reiterated here:

### 1) 602(a) - Environmental Review

The KDHE will conduct environmental reviews in accordance with K.A.R. 28-16-13 the Kansas Environmental Review Procedure.



2) 602(b)(3) - Binding Commitment

The KDHE will enter into binding commitments equal to at least 120% of each quarterly capitalization grant payment within one year after receipt of the payment.

3) 602(b)(4) - Expeditious and Timely Expenditures

The KDHE will expend all funds in the KWPCRLF in an expeditious and timely manner.

4) 602(b)(5) - First Use for Enforceable Requirements

Funds will first be used to assure maintenance of progress toward compliance with enforceable deadlines, goals and requirements of the Clean Water Act.

5) 602(b)(6) - Compliance with Title II Requirements

EPA has clarified the "Title II Requirements" of Section 602(b)(6) are no longer applicable for loan projects executed after October 1, 1994. There are no projects included in Appendix A that include "Title II Reqmts."

6) Other Federal Requirements (Cross cutters)

EPA has also clarified the Federal "Cross Cutting" authorities (that is, other Federal laws and authorities that apply by their own terms in Federal financial assistance programs) are separate issues. Even though the "Title II Requirements" have now "sunsetting", all projects funded with funds "directly made available by" capitalization grants must also comply with these Federal "Cross Cutting" laws and authorities. These "Cross Cutters" are listed in the October 2003 Cross-Cutting Federal Authorities Handbook.

The KWPCRF project requirements to manage a loan project have been updated. The KWPCRLF "Procurement Procedures" were recently reviewed and revised dated May 3, 2010, and loan projects must continue to comply with the "Cross Cutters" as listed in the October 2003 Cross-Cutting Federal Authorities Handbook, including new DBE regulations, as additional Federal monies has increased the amounts of funds "directly made available by" EPA capitalization grants. Therefore, all projects in this IUP are identified as required to comply with "Cross Cutters". Also, FFY 2011 and FFY 2012 funded projects must include Davis/Bacon requirements, reference Attachment 4 of Appendix E.

7) Environmental Benefits Reporting

The KDHE will provide Environmental Benefits reporting to EPA by completing the "one-pager" information submittal to the web-based information collection system, and add this spreadsheet as an Appendix to the Annual Report.

## 8) Cross Collateralization

Between the two Kansas SRF bond resolutions and the new indenture of the Kansas SRF programs, there are two methods for cross-collateralization to provide security for bond issues. The Kansas Public Water Supply Loan Fund (KPWSLF) originally issued bonds through the Kansas Development Finance Authority (KDFA) Bond Resolution No. 106 and the Kansas Water Pollution Control Revolving Loan Fund (KWPCRLF) originally issued bonds through the KDFA Bond Resolution No. 37. In 2006, Kansas Statutes were amended to allow assets of either fund to be used as revenue to secure payment of principal and interest of the corresponding fund.

The actual mechanism for this cross-collateralization is found in Section 805 of the KPWSLF Bond Resolution and Section 709 of the KWPCRLF Bond Resolution (excerpted below). The only funds allowed to be used as revenue for the corresponding program are excess revenue as determined after the annual bond principal payment and these funds can only be used by the corresponding program to prevent a leveraged bond default. Furthermore if any funds are used by the corresponding program they are to be paid back without interest once that program has excess revenues. No debt service coverage levels or reserve accounts from the corresponding program are presented to potential bond holders as security to secure the issue of bonds because there is no guarantee that the other program will be able to provide revenue to the cross-collateralization account or even provide such revenue in a timely manner to prevent a default.

"After all payments and credits required at the time to be made under the provisions of this Section and the preceding Sections, have been made, all moneys remaining in the Principal Account following the final Principal Payment Date in each Fiscal Year shall, subject to the delivery of a Projected Revenue Certificate prepared in accordance with the last sentence of this Section, be paid and credited to the DW Cross-Collateralization Account to the extent necessary to: (a) prevent a monetary default on the CW Leveraged Bonds, or to the extent permitted by the Federal Act and the CW Act, any other CW Bonds; (b) replenish the Bond Reserve Fund for the CW Bonds in accordance with the requirements of the CW Bond Resolution; or (c) make repayments of CW Transferred Deposits, without interest, to the CW Revenue Fund.

All moneys remaining in the Recycled Loan Account following any Payment Date, subject to the delivery of a Projected Revenue Certificate prepared in accordance with in the last sentence of this subsection (d), be paid and credited to the CW Cross-Collateralization Account to the extent necessary to: (i) prevent a monetary default on the DW Leveraged Bonds, or to the extent permitted by the Federal Act and the DW Act, any other DW Bonds; (ii) replenish the Leveraged Reserve Fund for the DW Bonds in accordance with the requirements of the DW Bond Resolution; or (iii) make repayments of DW Transferred Deposits, without interest, to the DW Revenue Fund. To the extent that moneys in the Recycled Loan Account are not paid and credited to the CW Cross-Collateralization Account as set forth above."

The new bond indenture, the Master Financing Indenture (MFI), was established in 2010 by KDFA Bond Resolution No.287 and combines both the KPWSLF and KWPCRF programs as one entity for the purpose of interfacing with the capital market. All bonds issued in 2010 and after will be under the MFI. The entire MFI is structured as a cross collateralization mechanism as all interest revenues are pledged to the State Match bonds and all other revenues are pledged to the Leveraged Bonds.

The MFI interface provides for an easier understanding to bond holders as to how debt service will be paid. However, as indicated in Section 903 of the MFI, the KPWSLF and KWPCRF will maintain and operate the loan programs as separate entities with separate accounting of all loan disbursements, interest revenues, principal revenues, State Match debt service, Leveraged debt service, State Match bond issuance amounts, Leveraged bond issuance amounts, State Match bond proceeds, Leveraged bond proceeds, and any other fund or account established in the MFI.

In the event that cross-collateralization is used to pay debt service on bonds, KDHE accounting will show revenue from one program was needed to pay debt service of the other program. That amount will be treated as a loan (without interest) to be repaid once the borrowing program has available funds in its portion of the Program Equity Fund. In the unlikely event that State Match debt service could not be paid using the corresponding program's portion of interest revenues in the MFI, an amount necessary needed to pay the State Match debt service of the program would be transferred from the corresponding program's Service Fee account to the State Match debt service account (Service Fees are a interest component of the loan repayments). This will assure that the assets of one program are not used, even temporarily, to pay for the other program's State Match.

Furthermore, the MFI will not issue any bonds unless it can show that the program which receives bond proceeds can pay 100% of the debt service of the corresponding bonds (in other words, without using cross-collateralization), reference Section 208 (a) of the MFI.

## VII. PUBLIC REVIEW AND COMMENT

A public hearing is scheduled for 10:00 A.M. on April 3, 2012 in the Azure Conference Room, 4<sup>th</sup> Floor, Curtis Building, 1000 SW Jackson, Topeka, Kansas, and comments will be received on the Updated Priority List and IUP. A summary of the hearing and other appropriate comments will be forwarded to EPA.

## APPENDIX A

### KWPCRF PROJECT INFORMATION PROJECTS TO BE FUNDED WITH FFY 2011 FUNDS

#### LISTED ALPHABETICALLY

Application Name	Project Number	Loan Amount	Priority Points
Assaria *	1903 01	505,020	57.00
Bonnie Springs	1824 01	351,000	15.00
Edgerton	1926 01	13,643,000	10.00
Ensign (Match CDBG)	1935 01	340,705	14.00
Glacial Hills RC&D Wolf River	1942 01	153,264	-----
Glacial Hills RC&D Delaware River, Ph. 4	1946 01	451,204	-----
Iola (Ph I)	1932 01	628,000	30.00
Kansas Water Office Smoky Hill River	1943 01	300,480	-----
Kansas Water Office Cottonwood River, Ph. 2	1944 01	1,310,652	-----
Leon *	1914 01	752,219	5.00
Lincolnville (Match CDBG)	1929 01	245,275	12.00
Pittsburg	1925 01	250,000	40.00
Plains	1936 01	656,191	10.00
University of Kansas	1945 01	450,000	-----
Valley Falls *	1927 01	500,000	12.00
Woodston *	1770 01	951,000	14.00

KWPCRF PROJECT INFORMATION  
PROJECTS TO BE FUNDED WITH 2012 FUNDS

LISTED ALPHABETICALLY

Alden *	1766 01	100,000	24.00
Alton *	1947 01	100,000	14.00
Arlington *	1771 01	300,000	48.00
Atchison (Dis)	1787 01	2,500,000	76.42
Baxter Springs *	1755 01	700,000	77.00
Chapman *	1948 01	150,000	20.00
Coolidge *	1703 01	400,000	42.00
Cottonwood Falls *	1949 01	400,000	25.00
Douglass *	1788 01	300,000	70.00
Enterprise	1922 01	1,000,000	10.00
Eudora	1938 01	800,000	25.00
Fall River	1933 01	200,000	12.00
Goodland *	1383 01	2,500,000	15.00
Horton *	1665 01	1,727,300	51.21
Iola (Ph. II)	1932 02	2,023,700	30.00
K.C. – CSO (Ph 2)	1596 02	15,000,000	88.00
K. C. Plt #1 Dis	1730 01	7,775,000	71.42
Leavenworth (Dis)	1729 01	6,648,000	71.42
Liberal	1391 01	12,000,000	63.00
Minneapolis	1951 01	500,000	10.00
Moundridge *	1950 01	800,000	45.00
Natoma *	1714 01	1,100,000	46.47
Newton (Ph 2)	1473 03	26,600,000	43.00
Olathe (H.S. Des.)	1815 01	550,000	36.00
Osage City	1667 01	1,000,000	42.00
Ottawa E & NE Ints	1928 01	4,707,513	10.00
Reno Co SD #202	1952 01	901,000	10.00

Rush Center *	1400 01	1,671,300	15.00
Sabetha	1953 01	2,000,000	18.00
Silver Lake	1934 01	697,400	10.00
Spivey *	1715 01	100,000	35.00
Sublette *	1954 01	200,000	25.00
Ulysses	1955 01	500,000	28.00

## APPENDIX B

### Proposed Payment Schedule (Increases in ACH Ceiling) FFY 2011 Cap Grant

Quarter (FFY)	Month/Yr.	Administration	Project	Total
4th - 2011	Sept. 2011	533,120		533,120
4th - 2011	Sept. 2011		12,794,880	12,794,880
<hr/>				
TOTALS		533,120	12,794,880	13,328,000

### FFY 2011 Cap Grant

Quarter (FFY)	Month/Yr.	Administration	Project	Total
4th - 2012	July 2012	540,000		540,000
4th - 2012	July 2012		4,806,775	4,806,775
2nd - 2013	Jan. 2013		8,153,225	8,153,225
<hr/>				
TOTALS		540,000	12,960,000	13,500,000

APPENDIX C: MULTI-YEAR PAYMENT SCHEDULE OF ACTUAL  
AND PROJECTED INCREASES IN SRF AUTOMATED CLEARINGHOUSE (ACH) (\$000)

		ACH Payments															
		FY 1989 (A)				FY 1990 (A)				FY 1991 (A)				FY 1992 (A)			
	TOTAL	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
89 GRANT OFFER & AMENDMENT NO. 1	8,783			9		4,740	3,751			283							
90 GRANT OFFER & AMENDMENT NO. 1	9,077							6,558	1,667	571				281			
91 GRANT OFFER	18,524										5,140	4,400		8,984			
92 GRANT OFFER	17,538																17,538

		ACH Payments															
		FY 1993 (A)				FY 1994 (A)				FY 1995 (A)				FY 1996 (A)			
	TOTAL	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
93 GRANT OFFER	17,349				4,000			5,100		5,100	3,194						
94 GRANT OFFER	10,764										5,000	5,764					
95 GRANT OFFER	11,117										500			10,617			
96 GRANT OFFER	18,211														6,471		5,212

		ACH Payments															
		FY 1997 (A)				FY 1998 (A)				FY 1999 (A)				FY 2000 (A)			
		Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
96 GRANT OFFER		1,873	4,655														
97 GRANT OFFER				4,482				1,100									
98 GRANT OFFER								12,154									
99 GRANT OFFER										9,845				2,310	381		
00 GRANT OFFER														12,155			



01 GRANT OFFER

02 GRANT OFFER

03 GRANT OFFER

04 GRANT OFFER

ACH Payments															
FY 2001 (A)				FY 2002 (A)				FY 2003 (A)				FY 2004 (A)			
Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
	12,007														
				12,033											
								3,665	8,291						
												504	11,458		

05 GRANT OFFER

06 GRANT OFFER

07 GRANT OFFER

08 GRANT OFFER

ACH Payments															
FY 2005 (A)				FY 2006 (A)				FY 2007 (A)				FY 2008 (A)			
Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
	11,500														
						7,884									
												5,900			6,758
															6,104

09 GRANT OFFER

10 GRANT OFFER

11 GRANT OFFER

12 GRANT OFFER

ACH Payments															
FY 2009 (A)				FY 2010 (A)				FY 2011				FY 2012			
Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4 (P)
		2,651	3,453												
						12,801		5,590							
										13,328					
															5,347

12 GRANT OFFER

ACH Payments			
Q1	Q2P	Q3	Q4
	8,153		

(A) - Actual

(P) - Projected

## APPENDIX D

### KWPCRF

#### Sources and Uses of Funds For Programs Year 2012 As of February 1, 2012

**Sources:**

Capitalization Grants Received FY 2009 and Prior Years *	\$ 2,955,683
FFY 2010 Cap Grant (w/o 604b - \$183,910) Remaining Amount	\$ 0
State Match for 2010 Cap. Grant Remaining	\$ 0
FFY 2011 Cap. Grant (w/o 604b - \$133,880) Remaining Amount	\$ 10,978,000
State Match for 2011 Cap. Grant Remaining	\$ 0
FFY 2012 Cap. Grant (w/o 604b - \$135,000) (Est.)	\$ 13,377,000
State Match for 2012 Cap. Grant - New Borrowing (Est.)	\$ 1,605,845
Recycled Loan Account Available New Loans	\$ 3,400,000
Leveraging Loans - New Capacity Borrowing	\$ <u>150,000,000</u>
Total	\$ 182,316,528

**Uses:**

2009 and Prior Years State Management [603(d)(7)]*	\$ 2,955,683
2010 State Management [603(d)(7)]	\$ 735,640
2011 State Management [603(d)(7)]	\$ 533,120
2011 Cap. Grant - New Loans to be Provided	\$ 9,709,240
2012 State Management [603(d)(7)]	\$ 535,000
2012 Cap. Grant - New Loans to be Provided	\$ 12,842,000
2012 State Match - New Loans to be Provided	\$ 1,605,845
Recycled Loan Fund - Loans to be Provided	\$ 3,400,000
Leveraging Loans - New Capacity Borrowing	\$ <u>150,000,000</u>
Total	\$ 182,316,528

\* As of February 14, 2012

\*\*Total Amount Available for New Loans as of 02/01/12 is \$177,552,085.

## Appendix E

Principal Forgiveness and Green Project Reserve  
Policy and Procedures Applicable to the FFY 2010, FFY 2011, and 2012  
Federal Funding Provided to the Kansas Water Pollution  
Control Revolving Fund  
July 12, 2010, Updated May 20, 2011, Updated February 29, 2012

The total FFY 2010, FFY 2011, and FFY 2012 Federal funding available to the Kansas Water Pollution Control Revolving Fund (KWPCRF) for new loans is \$177,552,085 as of February 1, 2012. This includes a future capacity to sell leveraging bonds in the amount of \$150,000,000. The 2010, 2011, and 2012 Federal appropriations laws require a portion of these funds be provided as an "additional subsidization" to loan recipients, and for the KWPCRF this "additional subsidization" is provided as "principal forgiveness" in the loans. For the 2011 KWPCRF program funding as a whole, the total amount of principal forgiveness cannot be less than \$1,235,051 and cannot be more than \$4,116,837. (See Attachment #3.) For the 2012 KWPCRF program funding as a whole, the estimated amounts of required principal forgiveness are a minimum of \$800,000 and a maximum of \$1,337,700. The Federal law encourages the additional subsidization be directed toward "communities that could not otherwise afford such projects", and to encourage "sustainability of projects" such as "natural" or "green" systems designs. Also, the 2011 Federal appropriations laws require a minimum 20% of these funds be made available to fund "Green Infrastructure" designs as defined by EPA guidance, which is an amount of \$2,665,600. A copy of the applicable Required Grant Conditions that were included in the FFY 2011 EPA Capitalization Grant to KDHE are presented in Attachment No. 1. Similar requirements are required of the FFY 2012 EPA Capitalization Grant, and are also attached. Item 3 of Attachment No. 1 addresses additional subsidization and Item 4 of Attachment No. 1 addresses Green Infrastructure.

The Federal law does not require the additional subsidization be "targeted" for certain projects based on affordability criteria or "green design" components, but this is encouraged. The Federal Law does require a portion of the funding be "targeted" for certain types of "green infrastructure" projects based on water-efficiency goals, energy efficiency goals, stormwater run-off mitigation, or other "environmentally innovative" projects. The purpose of this document is to establish these policies and procedures for the 2012 Federal funding program. The "green infrastructure" funding can be as loans, additional subsidization, or a combination of the two. More than the 20% up to the entire 100% of the 2011 appropriations can be used for "green infrastructure" as can the entire amount available for principal forgiveness, and KDHE had encouraged the use of this additional funding in the wastewater SRF program be utilized for both "across the board" principal forgiveness to be made available to every 2011 KWPCRF program Loan Recipient to assure the minimum amount is provided, and to also encourage "green infrastructure" to the maximum extent possible. There is an additional restriction on the use of principal forgiveness, in that any 2011 KWPCRF program loan provided to a community project to "match" funding to a CDBG grant cannot receive principal forgiveness. Therefore the 2011 KWPCRF program loans provided to community projects that also receive a CDBG grant will be 100% low interest loan funding.

Considering the substantial reduction of federal funds available to provide principal forgiveness, KDHE will no longer provide principal forgiveness in new Loan Agreements dated after February 23, 2012.

KDHE will make every effort to provide the amounts of principal forgiveness as indicated in prior loan agreements. No one can predict the future, and if by some chance EPA and Congress provide additional appropriations with required principal forgiveness in the future, then after all current principal forgiveness obligations of prior loan agreements have been met, KDHE will provide principal forgiveness to new loans dated after February 23, 2012 in accordance with the established procedures in Appendix E of this IUP. The additional principal forgiveness will be provided to Loan Agreements in the order as the completed applications were received.

Principal Forgiveness to all Projects (except CDBG matching loans):

To help assure the minimum amount of additional subsidization as required by the Federal law is provided, KDHE will provide a minimum of 15% principal forgiveness to every KWPCRF Loan provided after October 30, 2009, (the date the 2010 Federal appropriations law was signed by the President) and prior to February 23, 2012, except community projects that also receive CDBG funding receive no principal forgiveness.

The Federal appropriations to the Clean Water SRF program have recently declined, with the amounts allowed for principal forgiveness also declining. Therefore the 15% principal forgiveness is no longer available for new loans in the future.

Principal Forgiveness and "Green" Infrastructure:

EPA has also provided guidance for the types and components of projects that qualify as "Green Project Reserve" (GPR) designs. A copy of the 2011 Green Project Reserve policy is presented as Attachment No. 2 and the 2012 policy is also attached. Only the 14 pages applicable to the Clean Water SRF program are included, the additional 9 pages applicable to the Drinking Water SRF program are not included. A similar policy is also attached for use of the FFY 2012 Cap Grant funding.

KDHE is also establishing the recommended types of projects, or portions of projects, and the extent of principal forgiveness for these projects that qualify as green infrastructure in Kansas, such as water efficiency and reuse, energy efficiency and on-site energy production, mitigation of adverse water quality impacts of stormwater runoff, or that are "environmentally innovative" projects. EPA requested the states solicit green infrastructure design projects before finalizing the 2012 Intended Use Plan, and KDHE has now selected the projects to receive funding. The guidance provided by EPA for the 2010 and 2011 Federal legislation provides the new requirements to be followed to identify Green Project Reserve designs and similar policies are provided for use of the FFY 2012 Cap Grant funding. The KDHE policy to provide additional subsidization to "traditional green" designs includes the list of recommended municipal wastewater types of projects and is Attachment #6. The list of examples of "green innovative" infrastructure recommended types of projects are provided in a separate document prepared by the Watershed Management Section of BOW/KDHE and is Attachment #7.

When providing funding for "green traditional" infrastructure projects the principal forgiveness will be an additional 25% of the as-bid cost of design, construction, and equipment costs for the qualifying "green components" of the design, in addition to the 15% "across the board" principal forgiveness. When providing funding for "green innovative" infrastructure projects, the principal forgiveness will be as provided in the guidance as prepared by the Watershed Management Section of BOW/KDHE. The 20% minimum amount of the FFY 2011 EPA Capitalization Grant was "set aside" to fund the "green innovative" applications to help assure the Federal GPR requirement is met.

The additional Federal funds available for principal forgiveness up to the maximum amount allowed will be provided to wastewater treatment and "green traditional" design projects. The Loan Agreement will provide 100% of allowable costs as the Loan Amount. Engineering cost estimates will be utilized to present the estimated construction cost of the "green traditional" infrastructure components of the project and the estimated amount of principal forgiveness will also be presented in the Loan Agreement. After the project has opened bids a loan amendment will be processed to adjust the loan amount and principal forgiveness. After project construction is complete and the final project cost has been paid, KDHE in conjunction with the Loan recipient will determine the actual costs of the "green traditional" infrastructure components, and process a loan amendment to reduce the loan amount thru principal forgiveness in an amount equal to 15% of the entire project cost plus 25% of the "green traditional" infrastructure components.

The Federal appropriations to the Clean Water SRF program have recently declined, with the amounts allowed for principal forgiveness also declining. Therefore the 25% principal forgiveness is no longer available for new loans in the future.

## **ATTACHMENT 1**

### **Required Grant Conditions**

1. The recipient of funds for the State Revolving Funds from P.L. 112-10, the FY 2011 Full-Year Continuing Appropriation, agrees to comply with all requests for data related to the use of the funds under Subchapter VI of the Clean Water Act (CWA) or Section 1452 of the Safe Drinking Water Act (SDWA), and to report all uses of the funds no less than quarterly, as EPA specifies for the CWSRF Benefits Reporting database and the Drinking Water Project Benefits Reporting database. This reporting shall include but not be limited to data with respect to compliance with the Green Project Reserve and additional subsidization requirements as specified in the FY 2010 Interior and Environment Appropriation Act and the Conference Report (H. Rpt. 111-316) and as outlined in the FY 2011 Procedures document, and other data as necessary to carry out the authorities cited in this Grant Condition.
2. In accordance with 40 CFR 31.40, 40 CFR 35.3165, and 40 CFR 35.3570, the recipient agrees to provide in its Annual Report information regarding key project characteristics, milestones, and environmental/public health protection results in the following areas:
  - 1) achievement of the outputs and outcomes established in the Intended Use Plan; 2) the reasons for delays if established outputs or outcomes were not met; 3) any additional pertinent information on environmental results; 4) compliance with the Green Project Reserve requirement as outlined in the FY 2011 Procedures document; and 5) compliance with the additional subsidization requirement as described in the FY 2011 Procedures document.
3. Preamble:

The 2011 Full-Year Continuing Appropriation to the CWSRF and DWSRF programs requires that a portion of the capitalization grant funds be used to provide additional subsidization, while relying on the purposes of the Funds in their underlying acts.

The application of the additional subsidies – in the form in which they are authorized in the FY 2011 Full-Year Continuing Appropriation – to the base SRF programs raises important issues for the underlying SRF programs. While the DWSRF program has since its inception offered discretion to States to provide additional subsidization, that authority was closely circumscribed by requirements that communities assisted meet the State’s definition of “disadvantaged,” and that the subsidies provided in any year could not exceed 30 percent of the capitalization grant. In contrast, the FY 2011 Full-Year Continuing Appropriation requires States to provide a minimum of 30 percent up to the entire amount of their DWSRF capitalization grants as additional subsidies. For the CWSRF, not less than 30 percent of the States total capitalization grants that exceed \$1,000,000,000 must be used for additional subsidies. For both programs, additional subsidies can be provided to “any eligible” recipient of SRF assistance, although priority for additional subsidies should be given to communities that could not otherwise afford eligible projects (see section 3b).

Moreover, the similar provision in ARRA was in a one-time, supplemental appropriation that was in addition to the base SRF program appropriation for FY 2009. The additional subsidization provision in FY 2011 comes in the appropriation for the base SRF programs. By authorizing States to provide up to 30.89 percent (CWSRF) or 100 percent (DWSRF) of the base SRF program capitalization grant in additional subsidies, this FY 2011 provision contemplates the possibility that, for the first time, only a portion or none of these base program capitalization grant funds will be repaid into the State Revolving Funds.

Under these circumstances, in which a large amount of base program capitalization grant funds will not revolve, it is prudent to include additional specifications in the capitalization agreements with States that ensure that the subsidies are funding infrastructure that is sustainable (not enabling the expansion of centralized infrastructure to accommodate growth while failing to adequately repair, replace, and upgrade infrastructure in existing communities who are not otherwise able to afford such projects). Section 602(a) of the CWA and section 1452(a)(3)(A)(i) of SDWA gives the authority to add such specifications to the capitalization grant. CWA Section 602(a)

specifies that the “State shall enter into an agreement with the Administrator which shall include but not be limited to the specifications set forth in subsection (b). . . .” SDWA Section 1452(g)(3)(A) authorizes EPA to publish guidance “to ensure that each state commits and expends funds allotted to the State under this section as efficiently as possible.” Therefore, EPA is adding a grant condition to all FY 2011 CWSRF and DWSRF capitalization grants.

a. The recipient agrees to use funds provided by this grant to provide additional subsidization in the form of principal forgiveness, negative interest rate loans, or grants, in accordance with P.L. 112-10 as follows:

(1) Clean Water State Revolving Fund capitalization recipients agree to use at least 9.27 percent, and no more than 30.89 percent of the funds provided by this grant to provide additional subsidization in accordance with P.L. 112-10. (For the exact amount, see Attachment 3 to the 2011 Procedures.)

(2) Drinking Water State Revolving Fund capitalization grant recipients agree to use at least 30 percent of the funds provided by this grant to provide additional subsidization in accordance with P.L. 112-10.

b. Priority for additional subsidies should be given to communities that could not otherwise afford such projects. To further ensure sustainability of projects receiving additional subsidies, these subsidies should be directed to: 1) repair, replacement, and upgrade of infrastructure in existing communities; 2) investigations, studies, or plans that improve the technical, financial and managerial capacity of the assistance recipient to operate, maintain, and replace financed infrastructure; and/or 3) preliminary planning, alternatives assessment and eligible capital projects that reflect the full life cycle costs of infrastructure assets, conservation of natural resources, and alternative approaches to integrate natural or “green” systems into the built environment. The recipient agrees to provide in its Annual Report an explanation as to how they did or did not address this provision.



4. The recipient agrees to make a timely and concerted solicitation for projects that address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities. The recipient agrees to include in its IUP such qualified projects, or components of projects, that total an amount at least equal to 20% of its capitalization grant. If there are not sufficient qualified projects or components already in the IUP that total 20% of the FY2011 funds available, the recipient agrees to conduct additional solicitation, to amend its project list to include any such qualified projects thus identified, and to provide not less than 20% of such FY 2011 funds available to such projects on its amended project list. If there are not sufficient qualified projects or components on the amended project list after such additional solicitation, the recipient may if necessary submit a waiver request to EPA in accordance with the FY 2011 Procedures.

5. Wage Rate Requirements:

- a. CWSRF: The recipient agrees to include in all agreements to provide assistance for the construction of treatment works carried out in whole or in part with such assistance made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.), or with such assistance made available under section 205(m) of that Act (33 U.S.C. 1285(m)), or both, a term and condition requiring compliance with the requirements of section 513 of that Act (33 U.S.C. 1372) in all procurement contracts and sub-grants, and require that loan recipients, procurement contractors and sub-grantees include such a term and condition in subcontracts and other lower tiered transactions. All contracts and subcontracts for the construction of treatment works carried out in whole or in part with assistance made available as stated herein shall insert in full in any contract in excess of \$2,000 the contract clauses as attached hereto entitled "Wage Rate Requirements Under FY 2011 Full-Year Continuing Appropriation." This term and condition applies to all agreements to provide assistance under the authorities referenced herein, whether in the form of a loan, bond purchase, grant, or any other vehicle to provide financing for a project, where such agreements are executed on or after October 30, 2009 and before October 1, 2011.

b. DWSRF: The recipient agrees to include in all agreements to provide assistance for any construction project carried out in whole or in part with such assistance made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12), a term and condition requiring compliance with the requirements of section 1450(e) of the Safe Drinking Water Act (42 U.S.C.300j-9(e)) in all procurement contracts and sub-grants, and require that loan recipients, procurement contractors and sub-grantees include such a term and condition in subcontracts and other lower tiered transactions All contracts and subcontracts for any construction project carried out in whole or in part with assistance made available as stated herein shall insert in full in any contract in excess of \$2,000 the contract clauses as attached hereto entitled "Wage Rate Requirements Under FY 2011 Full-Year Continuing Appropriation." This term and condition applies to all agreements to provide assistance under the authorities referenced herein, whether in the form of a loan, bond purchase, grant, or any other vehicle to provide financing for a project, where such agreements are executed on or after October 30, 2009 and before October 1, 2011.

## **ATTACHMENT 2**

### **2011 Clean Water and Drinking Water State Revolving Fund 20% Green Project Reserve: Guidance for Determining Project Eligibility**

I. Introduction: The Fiscal Year (FY) 2011 Full-Year Continuing Appropriation Act (P.L. 112-10) included additional requirements affecting both the Clean Water and the Drinking Water State Revolving Fund (SRF) programs. This attachment is included in the *Procedures for Implementing Certain Provisions of EPA's Fiscal Year 2011 Full-Year Continuing Appropriation Affecting the Clean Water and Drinking Water State Revolving Fund Programs*. Because of differences in project eligibility for each program, the Clean and Drinking Water SRFs have separate guidance documents that identify specific goals and eligibilities for green infrastructure, water and energy efficient improvements, and environmentally innovative activities. Part A includes the details for the Clean Water SRF program, and Part B the Drinking Water SRF program.

Public Law 112-10 carries forward language from the FY 2010 Appropriation that states: "Provided, that for fiscal year 2010, to the extent there are sufficient eligible project applications, not less than 20 percent of the funds made available under this title to each State for Clean Water State Revolving Fund capitalization grants and not less than 20 percent of the funds made available under this title to each State for Drinking Water State Revolving Fund capitalization grants shall be used by the State for projects to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities." These four categories of projects are the components of the Green Project Reserve (GPR).

II. GPR Goals: Congress' intent in enacting the GPR is to direct State investment practices in the water sector to guide funding toward projects that utilize green or soft-path practices to complement and augment hard or gray infrastructure, adopt practices that reduce the environmental footprint of water and wastewater treatment, collection, and distribution, help utilities adapt to climate change, enhance water and energy conservation, adopt more sustainable solutions to wet weather flows, and promote innovative approaches to water management problems. Over time, GPR projects could enable utilities to take savings derived from reducing water losses and energy consumption, and use them for public health and environmental enhancement projects. Additionally, EPA expects that green projects will help the water sector improve the quality of water services without putting additional strain on the energy grid, and by reducing the volume of water lost every year.

III. Background: For the FY 2010 GPR Guidance, EPA used an inclusive approach to determine what is and is not a 'green' water project. Wherever possible, this guidance references existing consensus-based industry practices to provide assistance in developing green projects. Input was solicited from State-EPA and EPA-Regional workgroups and the water sector. EPA staff also reviewed approaches promoted by green practice advocacy groups and water associations, and green infrastructure implemented by engineers and managers in the water sector. EPA also

assessed existing 'green' policies within EPA and received input from staff in those programs to determine how EPA funds could be used to achieve shared goals.

The FY 2011 SRF GPR Guidance provides States with information needed to determine which projects count toward the GPR requirement. The intent of the GPR Guidance is to describe projects and activities that fit within the four specific categories listed in the FY 2010 Appropriations Act which also apply to the FY 2011 Full-Year Continuing Appropriation. This guidance defines each category of GPR projects and lists projects that are clearly eligible for GPR, heretofore known as categorically eligible projects. For projects that do not appear on the list of categorically projects, they may be evaluated for their eligibility within one of the four targeted types of GPR eligible projects based upon a business case that provides clear documentation (see the *Business Case Development* sections in Parts A & B below).

GPR may be used for planning, design, and/or building activities. Entire projects, or the appropriate discrete components of projects, may be eligible for GPR. Projects do not have to be part of a larger capital project to be eligible. All projects or project components counted toward the GPR requirement must clearly advance one or more of the objectives articulated in the four categories of GPR discussed below.

The Green Project Reserve sets a new precedent for the SRFs by targeting funding towards projects that States may not have funded in prior years. Water quality benefits from GPR projects rely on proper operation and maintenance to achieve the intended benefits of the projects and to achieve optimal performance of the project. EPA encourages states and funding recipients to thoroughly plan for proper operation and maintenance of the projects funded by the SRFs, including training in proper operation of the project. It is noted, however, that the SRFs cannot provide funding for operation and maintenance costs, including training, in the SRF assistance agreements. Some of these costs may, however, be funded through appropriate DWSRF set-asides under limited conditions.

## PART A – CWSRF GPR SPECIFIC GUIDANCE

### CWSRF Eligibility Principles

**State SRF programs are responsible for identifying projects that count toward GPR. The following overarching principles, or decision criteria, apply to all projects that count toward GPR and will help states identify projects.**

- 0.1 All GPR projects must otherwise be eligible for CWSRF funding. The GPR requirement does not create new funding authority beyond that described in Title VI of the CWA. Consequently, a subset of 212, 319 and 320 projects will count towards the GPR. The principles guiding CWSRF funding eligibility include:
- 0.2 All Sec 212 projects must be consistent with the definition of “treatment works” as set forth in section 212 of the Clean Water Act (CWA).
- 0.2-1 All section 212 projects must be publicly owned, as required by CWA section 603(c)(1).
- 0.2-2 All section 212 projects must serve a public purpose.
- 0.2-3 POTWs as a whole are utilized to protect or restore water quality. Not all portions of the POTW have a direct water quality impact in and of themselves (i.e. security fencing). Consequently, POTW projects are not required to have a direct water quality benefit, though most of them will.
- 0.3 Eligible nonpoint source projects implement a nonpoint source management program under an approved section 319 plan or the nine element watershed plans required by the 319 program.
- 0.3-1 Projects prevent or remediate nonpoint source pollution.
- 0.3-2 Projects can be either publicly or privately owned and can serve either public or private purposes. For instance, it is acceptable to fund land conservation activities that preserve the water quality of a drinking water source, which represents a public purpose project. It is also acceptable to fund agricultural BMPs that reduce nonpoint source pollution, but also improve the profitability of the agricultural operation. Profitability is an example of a private purpose.
- 0.3-3 Eligible costs are limited to planning, design and building of capital water quality projects. The CWSRF considers planting trees and shrubs, purchasing equipment, environmental cleanups and the development and initial delivery of education programs as capital water quality projects. Daily maintenance and operations, such as expenses and salaries are not considered capital costs.
- 0.3-4 Projects must have a direct water quality benefit. Implementation of a water quality project should, in itself, protect or improve water quality. States should be able to estimate the quantitative and/or qualitative water quality benefit of a nonpoint source project.
- 0.3-5 Only the portions of a project that remediate, mitigate the impacts of, or prevent water pollution or aquatic or riparian habitat degradation should be funded. Where water quantity projects improve water quality (e.g. reduction of flows from impervious surfaces that adversely affect stream health, or the modification of

irrigation systems to reduce runoff and leachate from irrigated lands), they would be considered to have a water quality benefit. In many cases, water quality protection is combined with other elements of an overall project. For instance, brownfield revitalization projects include not only water quality assessment and cleanup elements, but often a redevelopment element as well. Where the water quality portion of a project is clearly distinct from other portions of the project, only the water quality portion can be funded by the CWSRF.

- 0.3-6 Point source solutions to nonpoint source problems are eligible as CWSRF nonpoint source projects. Section 319 Nonpoint Source Management Plans identify sources of nonpoint source pollution. In some cases, the most environmentally and financially desirable solution has point source characteristics and requires an NPDES discharge permit. For instance, a septage treatment facility may be crucial to the proper maintenance and subsequent functioning of decentralized wastewater systems. Without the septage treatment facility, decentralized systems are less likely to be pumped, resulting in malfunctioning septic tanks.
- 0.4 Eligible projects under section 320 implement an approved section 320 Comprehensive Conservation Management Plan (CCMP).
  - 0.4-1 Section 320 projects can be either publicly or privately owned.
  - 0.4-2 Eligible costs are limited to capital costs.
  - 0.4-3 Projects must have a direct benefit to the water quality of an estuary. This includes protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on water, and requires the control of point and nonpoint sources of pollution to supplement existing controls of pollution.
  - 0.4-4 Only the portions of a project that remediate, mitigate the impacts of, or prevent water pollution in the estuary watershed should be funded.
- 0.5 GPR projects must meet the definition of one of the four GPR categories. The Individual GPR categories do not create new eligibility for the CWSRF. The projects that count toward GPR must otherwise be eligible for CWSRF funding.
- 0.6 GPR projects must further the goals of the Clean Water Act.<sup>1</sup>

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<sup>1</sup> Drinking Water Utilities can apply for CWSRF funding

## **CWSRF Technical Guidance**

**The following sections outline the technical aspects for the CWSRF Green Project Reserve. It is organized by the four categories of green projects: green infrastructure, water efficiency, energy efficiency, and environmentally innovative activities. Categorically green projects are listed, as well as projects that are ineligible. Design criteria for business cases and example projects that would require a business case are also provided.**

### **1.0 GREEN INFRASTRUCUTRE**

- 1.1 Definition: Green stormwater infrastructure includes a wide array of practices at multiple scales that manage wet weather and that maintain and restore natural hydrology by infiltrating, evapotranspiring and harvesting and using stormwater. On a regional scale, green infrastructure is the preservation and restoration of natural landscape features, such as forests, floodplains and wetlands, coupled with policies such as infill and redevelopment that reduce overall imperviousness in a watershed. On the local scale green infrastructure consists of site- and neighborhood-specific practices, such as bioretention, trees, green roofs, permeable pavements and cisterns.
- 1.2 Categorical Projects
  - 1.2-1 Implementation of green streets (combinations of green infrastructure practices in transportation rights-of-ways), for either new development, redevelopment or retrofits including: permeable pavement<sup>2</sup>, bioretention, trees, green roofs, and other practices such as constructed wetlands that can be designed to mimic natural hydrology and reduce effective imperviousness at one or more scales. Vactor trucks and other capital equipment necessary to maintain green infrastructure projects.
  - 1.2-2 Wet weather management systems for parking areas including: permeable pavement<sup>2</sup>, bioretention, trees, green roofs, and other practices such as constructed wetlands that can be designed to mimic natural hydrology and reduce effective imperviousness at one or more scales. Vactor trucks and other capital equipment necessary to maintain green infrastructure projects.
  - 1.2-3 Implementation of comprehensive street tree or urban forestry programs, including expansion of tree boxes to manage additional stormwater and enhance tree health.
  - 1.2-4 Stormwater harvesting and reuse projects, such as cisterns and the systems that allow for utilization of harvested stormwater, including pipes to distribute stormwater for reuse.
  - 1.2-5 Downspout disconnection to remove stormwater from sanitary, combined sewers and separate storm sewers and manage runoff onsite.

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<sup>2</sup> The total capital cost of permeable pavement is eligible, not just the incremental additional cost when compared to impervious pavement.

- 1.2-6 Comprehensive retrofit programs designed to keep wet weather discharges out of all types of sewer systems using green infrastructure technologies and approaches such as green roofs, green walls, trees and urban reforestation, permeable pavements and bioretention cells, and turf removal and replacement with native vegetation or trees that improve permeability.
- 1.2-7 Establishment or restoration of permanent riparian buffers, floodplains, wetlands and other natural features, including vegetated buffers or soft bioengineered stream banks. This includes stream day lighting that removes natural streams from artificial pipes and restores a natural stream morphology that is capable of accommodating a range of hydrologic conditions while also providing biological integrity. In highly urbanized watersheds this may not be the original hydrology.
- 1.2-8 Projects that involve the management of wetlands to improve water quality and/or support green infrastructure efforts (e.g., flood attenuation).<sup>3</sup>
  - 1.2-8a Includes constructed wetlands.
  - 1.2-8b May include natural or restored wetlands if the wetland and its multiple functions are not degraded and all permit requirements are met.
- 1.2-9 The water quality portion of projects that employ development and redevelopment practices that preserve or restore site hydrologic processes through sustainable landscaping and site design.
- 1.2-10 Fee simple purchase of land or easements on land that has a direct benefit to water quality, such as riparian and wetland protection or restoration.
- 1.3 Projects That Do Not Meet the Definition of Green Infrastructure
  - 1.3-1 Stormwater controls that have impervious or semi-impervious liners and provide no compensatory evapotranspirative or harvesting function for stormwater retention.
  - 1.3-2 Stormwater ponds that serve an extended detention function and/or extended filtration. This includes dirt lined detention basins.
  - 1.3-3 In-line and end-of-pipe treatment systems that only filter or detain stormwater.
  - 1.3-4 Underground stormwater control and treatment devices such as swirl concentrators, hydrodynamic separators, baffle systems for grit, trash removal/floatables, oil and grease, inflatable booms and dams for in-line underground storage and diversion of flows.
  - 1.3-5 Stormwater conveyance systems that are not soil/vegetation based (swales) such as pipes and concrete channels. Green infrastructure projects that include pipes to collect stormwater may be justified as innovative environmental projects pursuant to Section 4.4 of this guidance.
  - 1.3-6 Hardening, channelizing or straightening streams and/or stream banks.
  - 1.3-7 Street sweepers, sewer cleaners, and vacuum trucks unless they support green infrastructure projects.

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<sup>3</sup> Wetlands are those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, vernal pools, and similar areas.



- 1.4 Decision Criteria for Business Cases
  - 1.4-1 Green infrastructure projects are designed to mimic the natural hydrologic conditions of the site or watershed.
  - 1.4-2 Projects that capture, treat, infiltrate, or evapotranspire water on the parcels where it falls and does not result in interbasin transfers of water.
  - 1.4-3 GPR project is in lieu of or to supplement municipal hard/gray infrastructure.
  - 1.4-4 Projects considering both landscape and site scale will be most successful at protecting water quality.
  - 1.4-5 Design criteria are available at:  
<http://cfpub.epa.gov/npdes/greeninfrastructure/munichandbook.cfm> and  
<http://cfpub.epa.gov/npdes/greeninfrastructure/technology.cfm>
- 1.5 Examples of Projects Requiring A Business Case
  - 1.5-1 Fencing to keep livestock out of streams and stream buffers. Fencing must allow buffer vegetation to grow undisturbed and be placed a sufficient distance from the riparian edge for the buffer to function as a filter for sediment, nutrients and other pollutants.

## **2.0 WATER EFFICIENCY**

- 2.1 Definition: EPA's WaterSense program defines water efficiency as the use of improved technologies and practices to deliver equal or better services with less water. Water efficiency encompasses conservation and reuse efforts, as well as water loss reduction and prevention, to protect water resources for the future.
- 2.2 Categorical Projects
  - 2.2-1 Installing or retrofitting water efficient devices, such as plumbing fixtures and appliances
    - 2.2-1a For example -- shower heads, toilets, urinals and other plumbing devices
    - 2.2-1b Where specifications exist, WaterSense labeled products should be the preferred choice (<http://www.epa.gov/watersense/index.html>).
    - 2.2-1c Implementation of incentive programs to conserve water such as rebates.
  - 2.2-2 Installing any type of water meter in previously unmetered areas
    - 2.2-2a If rate structures are based on metered use
    - 2.2-2b Can include backflow prevention devices if installed in conjunction with water meter
  - 2.2-3 Replacing existing broken/malfunctioning water meters, or upgrading existing meters, with:
    - 2.2-3a Automatic meter reading systems (AMR), for example:
      - 2.2-3a(i) Advanced metering infrastructure (AMI)
      - 2.2-3a(ii) Smart meters
    - 2.2-3b Meters with built in leak detection
    - 2.2-3c Can include backflow prevention devices if installed in conjunction with water meter replacement

- 2.2-4 Retrofitting/adding AMR capabilities or leak detection equipment to existing meters (not replacing the meter itself).
  - 2.2-5 Water audit and water conservation plans, which are reasonably expected to result in a capital project.
  - 2.2-6 Recycling and water reuse projects that replace potable sources with non-potable sources,
    - 2.2-6a Gray water, condensate and wastewater effluent reuse systems (where local codes allow the practice)
    - 2.2-6b Extra treatment costs and distribution pipes associated with water reuse.
  - 2.2-7 Retrofit or replacement of existing landscape irrigation systems with more efficient landscape irrigation systems, including moisture and rain sensing equipment.
  - 2.2-8 Retrofit or replacement of existing agricultural irrigation systems with more efficient agricultural irrigation systems.
- 2.3 Projects That Do Not Meet the Definition of Water Efficiency
- 2.3-1 Agricultural flood irrigation.
  - 2.3-2 Lining of canals to reduce water loss.
  - 2.3-3 Replacing drinking water distribution lines. This activity extends beyond CWSRF eligibility and is more appropriately funded by the DWSRF.
  - 2.3-4 Leak detection equipment for drinking water distribution systems, unless used for reuse distribution pipes.
- 2.4 Decision Criteria for Business Cases
- 2.4-1 Water efficiency can be accomplished through water saving elements or reducing water consumption. This will reduce the amount of water taken out of rivers, lakes, streams, groundwater, or from other sources.
  - 2.4-2 Water efficiency projects should deliver equal or better services with less net water use as compared to traditional or standard technologies and practices
  - 2.4-3 Efficient water use often has the added benefit of reducing the amount of energy required by a POTW, since less water would need to be collected and treated; therefore, there are also energy and financial savings.
- 2.5 Examples of Projects Requiring a Business Case.
- 2.5-1 Water meter replacement with traditional water meters (see AWWA M6 *Water Meters – Selection Installation, Testing, and Maintenance*).
  - 2.5-2 Projects that result from a water audit or water conservation plan
  - 2.5-3 Storage tank replacement/rehabilitation to reduce loss of reclaimed water.
  - 2.5-4 New water efficient landscape irrigation system (where there currently is not one).
  - 2.5-5 New water efficient agricultural irrigation system (where there currently is not one).

### 3.0 ENERGY EFFICIENCY

- 3.1 Definition: Energy efficiency is the use of improved technologies and practices to reduce the energy consumption of water quality projects, use energy in a more efficient way, and/or produce/utilize renewable energy.
- 3.2 Categorical Projects
  - 3.2-1 Renewable energy projects such as wind, solar, geothermal, micro-hydroelectric, and biogas combined heat and power systems (CHP) that provide power to a POTW. (<http://www.epa.gov/cleanenergy>). Micro-hydroelectric projects involve capturing the energy from pipe flow.
    - 3.2-1a POTW owned renewable energy projects can be located onsite or offsite.
    - 3.2-1b Includes the portion of a publicly owned renewable energy project that serves POTW's energy needs.
    - 3.2-1c Must feed into the grid that the utility draws from and/or there is a direct connection.
  - 3.2-2 Projects that achieve a 20% reduction in energy consumption are categorically eligible for GPR<sup>4</sup>. Retrofit projects should compare energy used by the existing system or unit process<sup>5</sup> to the proposed project. The energy used by the existing system should be based on name plate data when the system was first installed, recognizing that the old system is currently operating at a lower overall efficiency than at the time of installation. New POTW projects or capacity expansion projects should be designed to maximize energy efficiency and should select high efficiency premium motors and equipment where cost effective. Estimation of the energy efficiency is necessary for the project to be counted toward GPR. If a project achieves less than a 20% reduction in energy efficiency, then it may be justified using a business case.
  - 3.2-3 Collection system Infiltration/Inflow (I/I) detection equipment
  - 3.2-4 POTW energy management planning, including energy assessments, energy audits, optimization studies, and sub-metering of individual processes to determine high energy use areas, which are reasonably expected to result in a capital project are eligible. Guidance to help POTWs develop energy management programs, including assessments and audits is available at [http://www.epa.gov/waterinfrastructure/pdfs/guidebook\\_si\\_energymanagement.pdf](http://www.epa.gov/waterinfrastructure/pdfs/guidebook_si_energymanagement.pdf).

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<sup>4</sup> The 20% threshold for categorically eligible CWSRF energy efficiency projects was derived from a 2002 Department of Energy study entitled *United States Industrial Electric Motor Systems Market Opportunities Assessment, December 2002* and adopted by the Consortium for Energy Efficiency. Further field studies conducted by Wisconsin Focus on Energy and other State programs support the threshold.

<sup>5</sup> A unit process is a portion of the wastewater system such as the collection system, pumping stations, aeration system, or solids handling, etc.

### 3.3 Projects That Do Not Meet the Definition of Energy Efficiency

- 3.3-1 Renewable energy generation that is *privately* owned or the portion of a publicly owned renewable energy facility that does not provide power to a POTW, either through a connection to the grid that the utility draws from and/or a direct connection to the POTW.
- 3.3-2 Simply replacing a pump, or other piece of equipment, because it is at the end of its useful life, with something of average efficiency.
- 3.3-3 Facultative lagoons, even if integral to an innovative treatment process.
- 3.3-4 Hydroelectric facilities, except micro-hydroelectric projects. Micro-hydroelectric projects involve capturing the energy from pipe flow.

### 3.4 Decision Criteria for Business Cases

- 3.4-1 Project must be cost effective. An evaluation must identify energy savings and payback on capital and operation and maintenance costs that does not exceed the useful life of the asset.  
[http://www.epa.gov/waterinfrastructure/pdfs/guidebook\\_si\\_energymanagement.pdf](http://www.epa.gov/waterinfrastructure/pdfs/guidebook_si_energymanagement.pdf)
- 3.4-2 The business case must describe how the project maximizes energy saving opportunities for the POTW or unit process.
- 3.4-3 Using existing tools such as Energy Star's Portfolio Manager ([http://www.energystar.gov/index.cfm?c=evaluate\\_performance.bus\\_portfolio\\_manager](http://www.energystar.gov/index.cfm?c=evaluate_performance.bus_portfolio_manager)) or Check Up Program for Small Systems (CUPSS) (<http://www.epa/cupss>) to document current energy usage and track anticipated savings.

### 3.5 Examples of Projects Requiring a Business Case

- 3.5-1 POTW projects or unit process projects that achieve less than a 20% energy efficiency improvement.
- 3.5-2 Projects implementing recommendations from an energy audit that are not otherwise designated as categorical.
- 3.5-3 Projects that cost effectively eliminate pumps or pumping stations.
- 3.5-4 Infiltration/Inflow (I/I) correction projects that save energy from pumping and reduced treatment costs and are cost effective.
  - 3.5-4a Projects that count toward GPR cannot build new structural capacity. These projects may, however, recover existing capacity by reducing flow from I/I.
- 3.5-5 I/I correction projects where excessive groundwater infiltration is contaminating the influent requiring otherwise unnecessary treatment processes (i.e. arsenic laden groundwater) and I/I correction is cost effective.
- 3.5-6 Replacing pre-Energy Policy Act of 1992 motors with National Electric Manufacturers Association (NEMA) premium energy efficiency motors.
  - 3.5-6a NEMA is a standards setting association for the electrical manufacturing industry (<http://www.nema.org/gov/energy/efficiency/premium/>).
- 3.5-7 Upgrade of POTW lighting to energy efficient sources such as metal halide pulse start technologies, compact fluorescent, light emitting diode (LED).
- 3.5-8 SCADA systems can be justified based upon substantial energy savings.

3.5-9 Variable Frequency Drive can be justified based upon substantial energy savings.

#### 4.0 ENVIRONMENTALLY INNOVATIVE

- 4.1 Definition: Environmentally innovative projects include those that demonstrate new and/or innovative approaches to delivering services or managing water resources in a more sustainable way.
- 4.2 Categorical Projects
  - 4.2-1 Total/integrated water resources management planning likely to result in a capital project.
  - 4.2-2 Utility Sustainability Plan consistent with EPA SRF's sustainability policy.
  - 4.2-3 Greenhouse gas (GHG) inventory or mitigation plan and submission of a GHG inventory to a registry (such as Climate Leaders or Climate Registry)
    - 4.3-3a Note: GHG Inventory and mitigation plan is eligible for CWSRF funding.
    - 4.2-3b EPA Climate Leaders:
      - <http://www.epa.gov/climateleaders/basic/index.html>
      - Climate Registry: <http://www.theclimateregistry.org/>
  - 4.2-4 Planning activities by a POTW to prepare for adaptation to the long-term effects of climate change and/or extreme weather.
    - 4.2-4a Office of Water – Climate Change and Water website:  
<http://www.epa.gov/water/climatechange/>
  - 4.2-5 Construction of US Building Council LEED certified buildings or renovation of an existing building on POTW facilities.
    - 4.2-5a Any level of certification (Platinum, Gold, Silver, Certified).
    - 4.2-5b All building costs are eligible, not just stormwater, water efficiency and energy efficiency related costs. Costs are not limited to the incremental additional costs associated with LEED certified buildings.
    - 4.2-5c U.S. Green Building Council website:  
<http://www.usgbc.org/displaypage.aspx?CategoryID=19>
  - 4.2-6 Decentralized wastewater treatment solutions to existing deficient or failing onsite wastewater systems.
    - 4.2-6a Decentralized wastewater systems include individual onsite and/or cluster wastewater systems used to collect, treat and disperse relatively small volumes of wastewater. An individual onsite wastewater treatment system is a system relying on natural processes and/or mechanical components, that is used to collect, treat and disperse or reclaim wastewater from a single dwelling or building. A cluster system is a wastewater collection and treatment system under some form of common ownership that collects wastewater from two or more dwellings or buildings and conveys it to a treatment and dispersal system located on a suitable site near the dwellings or buildings. Decentralized projects may include a combination of these systems. EPA recommends that decentralized systems be managed under a central management entity with enforceable program requirements, as stated in the *EPA Voluntary Management Guidelines*.  
[http://www.epa.gov/owm/septic/pubs/septic\\_guidelines.pdf](http://www.epa.gov/owm/septic/pubs/septic_guidelines.pdf)

4.2-6b Treatment and Collection Options: A variety of treatment and collection options are available when implementing decentralized wastewater systems. They typically include a septic tank, although many configurations include additional treatment components following or in place of the septic tank, which provide for advanced treatment solutions. Most disperse treated effluent to the soil where further treatment occurs, utilizing either conventional soil absorption fields or alternative soil dispersal methods which provide advanced treatment. Those that discharge to streams, lakes, tributaries, and other water bodies require federal or state discharge permits (see below). Some systems promote water reuse/recycling, evaporation or wastewater uptake by plants. Some decentralized systems, particularly cluster or community systems, often utilize alternative methods of collection with small diameter pipes which can flow via gravity, pump, or siphon, including pressure sewers, vacuum sewers and small diameter gravity sewers. Alternative collection systems generally utilize piping that is less than 8 inches in diameter, or the minimum diameter allowed by the state if greater than 8 inches, with shallow burial and do not require manholes or lift stations. Septic tanks are typically installed at each building served or another location upstream of the final treatment and dispersal site. Collection systems can transport raw sewage or septic tank effluent. Another popular dispersal option used today is subsurface drip infiltration. Package plants that discharge to the soil are generally considered decentralized, depending on the situation in which they are used. While not entirely inclusive, information on treatment and collection processes is described, in detail, in the “*Onsite Wastewater Treatment Technology Fact Sheets*” section of the EPA Onsite Manual [http://www.epa.gov/owm/septic/pubs/septic\\_2002\\_osdm\\_all.pdf](http://www.epa.gov/owm/septic/pubs/septic_2002_osdm_all.pdf) and on EPA’s septic system website under Technology Fact Sheets. [http://cfpub.epa.gov/owm/septic/septic.cfm?page\\_id=283](http://cfpub.epa.gov/owm/septic/septic.cfm?page_id=283)

4.3 Projects That Do Not Meet the Definition of Environmentally Innovative

- 4.3-1 Air scrubbers to prevent nonpoint source deposition.
- 4.3-2 Facultative lagoons, even if integral to an innovative treatment processes.
- 4.3-3 Surface discharging decentralized wastewater systems where there are cost effective soil-based alternatives.
- 4.3-4 Higher sea walls to protect POTW from sea level rise.
- 4.3-5 Reflective roofs at POTW to combat heat island effect.

4.4 Decision Criteria for Business Cases

- 4.4-1 State programs are allowed flexibility in determining what projects qualify as innovative in their state based on unique geographical or climatological conditions.
  - 4.4-1a Technology or approach whose performance is expected to address water quality but the actual performance has not been demonstrated in the state;

- 4.4-1b Technology or approach that is not widely used in the State, but does perform as well or better than conventional technology/approaches at lower cost; or
- 4.4-1c Conventional technology or approaches that are used in a new application in the State.

#### 4.5 Examples of Projects Requiring a Business Case

- 4.5-1 Constructed wetlands projects used for municipal wastewater treatment, polishing, and/or effluent disposal.
  - 4.5-1a Natural wetlands, as well as the restoration/enhancement of degraded wetlands, may not be used for wastewater treatment purposes and must comply with all regulatory/permitting requirements.
  - 4.5-1b Projects may not (further) degrade natural wetlands.
- 4.5-2 Projects or components of projects that result from total/integrated water resource management planning consistent with the decision criteria for environmentally innovative projects and that are Clean Water SRF eligible.
- 4.5-3 Projects that facilitate adaptation of POTWs to climate change identified by a carbon footprint assessment or climate adaptation study.
- 4.5-4 POTW upgrades or retrofits that remove phosphorus for beneficial use, such as biofuel production with algae.
- 4.5-5 Application of innovative treatment technologies or systems that improve environmental conditions and are consistent with the Decision Criteria for environmentally innovative projects such as:
  - 4.5-5a Projects that significantly reduce or eliminate the use of chemicals in wastewater treatment;
  - 4.5-5b Treatment technologies or approaches that significantly reduce the volume of residuals, minimize the generation of residuals, or lower the amount of chemicals in the residuals. (National Biosolids Partnership, 2010; *Advances in Solids Reduction Processes at Wastewater Treatment Facilities Webinar*; [http://www.e-wef.org/timssnet/meetings/tnt\\_meetings.cfm?primary\\_id=10CAP2&Action=LONG&subsystem=ORD%3cbr](http://www.e-wef.org/timssnet/meetings/tnt_meetings.cfm?primary_id=10CAP2&Action=LONG&subsystem=ORD%3cbr)).
  - 4.5-5b(i) Includes composting, class A and other sustainable biosolids management approaches.
- 4.5-6 Educational activities and demonstration projects for water or energy efficiency.
- 4.5-7 Projects that achieve the goals/objectives of utility asset management plans ([http://www.epa.gov/safewater/smallsystems/pdfs/guide\\_smallsystems\\_assetmanagement\\_bestpractices.pdf](http://www.epa.gov/safewater/smallsystems/pdfs/guide_smallsystems_assetmanagement_bestpractices.pdf); <http://www.epa.gov/owm/assetmanage/index.htm>).
- 4.5-8 Sub-surface land application of effluent and other means for ground water recharge, such as spray irrigation and overland flow.
  - 4.5-8a Spray irrigation and overland flow of effluent is not eligible for GPR where there is no other cost effective alternative.

## **Business Case Development**

**This guidance is intended to be comprehensive: however, EPA understands our examples projects requiring a business case may not be all inclusive. A business case is a due diligence document. For those projects, or portions of projects, which are not included in the categorical projects lists provided above, a business case will be required to demonstrate that an assistance recipient has thoroughly researched anticipated ‘green’ benefits of a project. Business cases will be approved by the State (see section III.A. in the *Procedures for Implementing Certain Provisions of EPA’s Fiscal Year 2011 Full-Year Continuing Appropriation Affecting the Clean Water and Drinking Water State Revolving Fund Programs*). An approved business case must be included in the State’s project files and contain clear documentation that the project achieves identifiable and substantial benefits. The following sections provide guidelines for business case development.**

### **5.0 Length of a Business Case**

5.0-1 Business cases must address the decision criteria for the category of project

5.0-2 Business cases should be adequate, but not exhaustive.

5.0-2a There are many formats and approaches. EPA does not require any specific one.

5.0-2b Some projects will require detailed analysis and calculations, while others many not require more than one page.

5.0-2c Limit the information contained in the business case to only the pertinent ‘green’ information needed to justify the project.

5.0-3 A business case can simply summarize results from, and then cite, existing documentation – such as engineering reports, water or energy audits, results of water system tests, etc.

### **5.1 Content of a Business Case**

5.1-1 Quantifiable water and/or energy savings or water loss reduction for water and energy efficiency projects should be included.

5.1-2 The cost and financial benefit of the project should be included, along with the payback time period where applicable. (NOTE: Clean Water SRF requires energy efficiency projects to be cost effective.)

### **5.2 Items Which Strengthen Business Case, but Are Not Required**

5.2-1 Showing that the project was designed to enable equipment to operate most efficiently.

5.2-2 Demonstrating that equipment will meet or exceed standards set by professional associations.

5.2-3 Including operator training or committing to utilizing existing tools such as Energy Star’s Portfolio Manager or CUPSS for energy efficiency projects.

5.3 Example Business Cases Are Available at <http://www.srfbusinesscases.net/>.



**ATTACHMENT 3**  
**FY 2011 Additional Subsidization and Green Project Reserve Requirements**

	FY 2011 Capitalization Grant (Allotment Less 604(b)) <sup>1</sup>	Additional Subsidization <sup>2</sup>		Green <sup>3</sup>
		Minimum Amount that must be provided as Additional Subsidization	Maximum Amount that may be provided as Additional Subsidization	Minimum Amount that must be provided for Green Projects
<b>Region 1</b>				
Connecticut	\$18,090,000	\$1,676,326	\$5,587,754	\$3,618,000
Maine	\$11,431,000	\$1,059,264	\$3,530,880	\$2,286,200
Massachusetts	\$50,136,000	\$4,645,898	\$15,486,326	\$10,027,200
New Hampshire	\$14,757,000	\$1,367,471	\$4,558,236	\$2,951,400
Rhode Island	\$9,915,000	\$918,782	\$3,062,608	\$1,983,000
Vermont	\$7,222,000	\$669,233	\$2,230,777	\$1,444,400
<b>Region 2</b>				
New Jersey	\$60,342,000	\$5,591,646	\$18,638,819	\$12,068,400
New York	\$162,993,000	\$15,103,893	\$50,346,311	\$32,598,800
Puerto Rico	\$19,259,000	\$1,784,653	\$5,948,842	\$3,851,800
<b>Region 3</b>				
Delaware	\$7,222,000	\$669,233	\$2,230,777	\$1,444,400
Maryland	\$35,714,000	\$3,309,470	\$11,031,567	\$7,142,800
Pennsylvania	\$58,492,000	\$5,420,214	\$18,067,380	\$11,698,400
Virginia	\$30,220,000	\$2,800,364	\$9,334,545	\$6,044,000
West Virginia	\$23,019,000	\$2,133,076	\$7,110,255	\$4,603,800
<b>Region 4</b>				
Alabama	\$16,511,000	\$1,530,007	\$5,100,022	\$3,302,200
Florida	\$49,845,000	\$4,618,932	\$15,396,440	\$9,969,000
Georgia	\$24,967,000	\$2,313,590	\$7,711,965	\$4,993,400
Kentucky	\$18,794,000	\$1,741,583	\$5,805,210	\$3,758,800
Mississippi	\$13,304,000	\$1,232,827	\$4,109,424	\$2,680,800
North Carolina	\$26,650,000	\$2,469,546	\$8,231,821	\$5,330,000
South Carolina	\$15,127,000	\$1,401,757	\$4,672,524	\$3,025,400
Tennessee	\$21,451,000	\$1,987,776	\$6,625,921	\$4,290,200
<b>Region 5</b>				
Illinois	\$66,784,000	\$6,188,600	\$20,628,665	\$13,356,800
Indiana	\$35,568,000	\$3,297,794	\$10,992,647	\$7,117,600
Michigan	\$63,494,000	\$5,883,729	\$19,612,429	\$12,698,800
Minnesota	\$27,141,000	\$2,515,045	\$8,383,484	\$5,428,200
Ohio	\$83,129,000	\$7,703,224	\$25,677,413	\$16,625,800
Wisconsin	\$39,921,000	\$3,699,315	\$12,331,052	\$7,984,200
<b>Region 6</b>				
Arkansas	\$9,657,000	\$894,875	\$2,982,915	\$1,931,400
Louisiana	\$16,233,000	\$1,504,246	\$5,014,152	\$3,246,800
New Mexico	\$7,222,000	\$669,233	\$2,230,777	\$1,444,400
Oklahoma	\$11,930,000	\$1,105,504	\$3,685,014	\$2,386,000
Texas	\$67,482,000	\$6,254,207	\$20,847,357	\$13,498,400
<b>Region 7</b>				
Iowa	\$19,985,000	\$1,851,928	\$6,173,093	\$3,997,000
Kansas	\$13,328,000	\$1,235,051	\$4,118,837	\$2,665,600
Missouri	\$40,936,000	\$3,793,371	\$12,644,571	\$8,187,200
Nebraska	\$7,529,000	\$697,682	\$2,325,605	\$1,505,800
<b>Region 8</b>				
Colorado	\$11,812,000	\$1,094,570	\$3,648,565	\$2,362,400
Montana	\$7,222,000	\$669,233	\$2,230,777	\$1,444,400
North Dakota	\$7,222,000	\$669,233	\$2,230,777	\$1,444,400
South Dakota	\$7,222,000	\$669,233	\$2,230,777	\$1,444,400
Utah	\$7,759,000	\$718,995	\$2,396,649	\$1,551,800
Wyoming	\$7,222,000	\$669,233	\$2,230,777	\$1,444,400
<b>Region 9</b>				
Arizona	\$9,973,000	\$924,157	\$3,080,523	\$1,994,600
California	\$105,610,000	\$9,786,446	\$32,621,486	\$21,122,000
Hawaii	\$11,436,000	\$1,059,727	\$3,532,424	\$2,287,200
Nevada	\$7,222,000	\$669,233	\$2,230,777	\$1,444,400
<b>Region 10</b>				
Alaska	\$8,827,000	\$817,962	\$2,726,540	\$1,765,400
Idaho	\$7,222,000	\$669,233	\$2,230,777	\$1,444,400
Oregon	\$16,681,000	\$1,545,760	\$5,152,533	\$3,336,200
Washington	\$25,680,000	\$2,379,660	\$7,932,201	\$5,136,000
<b>Total</b>	<b>\$1,446,940,000</b>	<b>\$134,082,000</b>	<b>\$446,940,000</b>	<b>\$289,388,000</b>
<b>Total Amount Applicable to the Additional Subsidization Requirement</b>	<b>\$446,940,000</b>			

1. Does not include DC and the Territories (American Samoa, Guam, Northern Marianas, and the Virgin Islands).

2. Not less than 30% of the funds made available to each State for CWSRF capitalization grants shall be used by the State to provide additional subsidy to eligible recipients in the form of forgiveness of principal, negative interest loans, or grants. However, this requirement only applies to the portion of the CWSRF capitalization grant appropriation that exceeds \$1 Billion.

3. To the extent that there are sufficient eligible projects, not less than 20% of the funds made available to each State for CWSRF capitalization grants shall be used by the State for projects to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities.



ATTACHMENT 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAY 20 2011

OFFICE OF  
WATER

**MEMORANDUM**

**SUBJECT:** Application of Davis-Bacon Act Wage Requirements to FY 2011 Clean Water and Drinking Water State Revolving Fund Assistance Agreements

**FROM:** James A. Hanlon, Director  
Office of Wastewater Management (4201M)

Cynthia C. Dougherty, Director  
Office of Groundwater and Drinking Water (4601M)

**TO:** Water Management Division Directors  
Regions I-X

This is to advise that the Davis-Bacon Act wage requirements apply to all assistance provided by the Clean Water Act State Revolving Fund and the Safe Drinking Water Act State Revolving Fund through September 30, 2011.

On April 15, 2011, the President signed the Department of Defense and Full-Year Continuing Appropriations Act, 2011, P.L. 112-10 (the final FY 2011 Continuing Resolution (CR)). This law extends funding for both the Clean Water State Revolving Fund (CWSRF) and the Drinking Water State Revolving Fund (DWSRF) through September 30, 2011.

As you are aware, language in the FY 2010 Appropriations Act, P.L. 111-88, "Making Appropriations for the Department of Interior, Environment, and Related Agencies for the Fiscal Year Ending September 30, 2010," required states to include in all assistance agreements executed on or after October 30, 2010, for the construction of treatment works under the CWSRF or for any construction under the DWSRF, a provision requiring the application of the Davis-Bacon Act requirements for the entirety of the construction activities financed by the assistance agreement through the completion of construction, no matter when construction commences. This requirement was to continue through FY 2010, which ended on September 30, 2010.

The FY 2011 Full-Year Continuing Appropriations Act directs the Agency to continue implementing the provisions specified in the FY 2010 Appropriation Act in FY 2011 unless expressly directed otherwise in the final FY 2011 CR. The final FY 2011 CR includes the following language in Section 1101(a): "Such amounts [are appropriated] as may be necessary, at the level specified in subsection (c) and *under the authority and conditions provided in applicable appropriations Acts for fiscal year 2010*, for projects and activities . . . for which

## ATTACHMENT 4

appropriations, funds, or other authority were made available in . . . The Department of Interior, Environment, and Related Agencies Appropriations Act, 2010 (division A of Public Law 111-88)."(emphasis added). This language requires the Agency to carry forward the conditions that were applicable to the FY10 SRF appropriated funds. In addition, section 1104 of the final FY 2011 CR states that "[e]xcept as otherwise expressly provided in this division [Division B], the requirements, authorities, conditions, limitations, and other provisions of the appropriations Acts referred to in section 1101(a) shall continue in effect through the date specified in section 1106 [September 30, 2011]." The language in Division B of the final FY 2011 CR appropriates funds for the SRF capitalization grants at a lower amount for FY11 than provided in FY 2010. But, the final FY 2011 CR – specifically, Division B – does not expressly alter the SRF provisions of the FY 2010 Appropriation Act concerning the tribal and territorial set-asides, additional subsidy, Green Project Reserve, or Davis-Bacon. After consultation with the Office of General Council, we have determined that the above cited provisions in the FY 2011 Full-Year Continuing Appropriation require the Agency to carry forward the conditions that were made applicable by the language of the FY 2010 Appropriations Act through FY 2011. Therefore, all assistance agreements entered into during the time period covered by the Continuing Resolution must include the application of Davis-Bacon requirements.

Please contact either of us or have your staff contact Jordan Dorfman at (202) 564-0614 if you have questions.



## Attachment 5

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

NOV 3 0 2009

OFFICE OF  
WATER

### MEMORANDUM

**SUBJECT:** Application of Davis-Bacon Act Wage Requirements to Fiscal Year 2010 Clean Water State Revolving Fund and Drinking Water State Revolving Fund Assistance Agreements

**FROM:** Peter S. Silva *Michael Higgins for*  
Assistant Administrator

**TO:** Water Management Division Directors  
Regions I - X

On October 30, 2009, P.L. 111-88, "Making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes," was enacted. This law provides appropriations for both the Clean Water State Revolving Fund (CWSRF) and the Drinking Water State Revolving Fund (DWSRF) for Fiscal Year 2010, while adding new requirements to these already existing programs. One new requirement, and the focus of this memorandum, requires the application of Davis-Bacon Act requirements.

P.L. 111-88 includes the following language in Title II under the heading, "Administrative Provisions, Environmental Protection Agency,"

For fiscal year 2010 the requirements of section 513 of the Federal Water Pollution Control Act (33 U.S.C. 1372) shall apply to the construction of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund as authorized by title VI of that Act (33 U.S.C. 1381 et seq.), or with assistance made available under section 205(m) of that Act (33 U.S.C. 1285(m)), or both.

For fiscal year 2010 the requirements of section 1450(e) of the Safe Drinking Water Act (42 U.S.C. 300j-9(e)) shall apply to any construction project carried out in whole or in part with assistance made available by a drinking water treatment revolving loan fund as authorized by section 1452 of that Act (42 U.S.C. 300j-12).

In order to comply with this provision, States must include in all assistance agreements, whether in the form of a loan, bond purchase, grant, or any other vehicle to provide financing for a project, executed on or after October 30, 2009 (date of enactment of P.L. 111-88), and prior to

## Attachment 5

2

October 1, 2010, for the construction of treatment works under the CWSRF or for any construction under the DWSRF, a provision requiring the application of Davis-Bacon Act requirements for the entirety of the construction activities financed by the assistance agreement through completion of construction, no matter when construction commences.

Application of the Davis-Bacon Act requirements extend not only to assistance agreements funded with Fiscal Year 2010 appropriations, but to all assistance agreements executed on or after October 30, 2009 and prior to October 1, 2010, whether the source of the funding is prior year's appropriations, state match, bond proceeds, interest earnings, principal repayments, or any other source of funding so long as the project is financed by an SRF assistance agreement. If a project began construction prior to October 30, 2009, but is financed or refinanced through an assistance agreement executed on or after October 30, 2009 and prior to October 1, 2010, Davis-Bacon Act requirements will apply to all construction that occurs on or after October 30, 2009, through completion of construction.

Notably, there is no application of the Davis-Bacon Act requirements where such a refinancing occurs for a project that has completed construction prior to October 30, 2009. This provision does not apply to any project for which an assistance agreement was executed prior to October 30, 2009, no matter when construction occurs.

Further information may be provided in the form of "Questions and Answers" if necessary.

We fully understand the complexity of this provision and the difficulties involved in its application. If you have any question, please contact us, or have your staff contact Jordan Dorfman, Attorney-Advisor, State Revolving Fund Branch, Municipal Support Division, at (202) 564-0614, or Philip Metzger, Attorney-Advisor, Infrastructure Branch, Drinking Water Protection Division, at (202) 564-3776.

## Attachment 6

Treatment and Reuse Concepts for Kansas "Traditional Green" Designs Qualifying for the Additional 25% Principal Forgiveness Loans based on As-Bid Design, Construction, and Equipment Costs FFY 2010 and FFY 2011 Federal Appropriations Act

The intent of this guidance document is to stimulate projects in Kansas to be funded by the 2010 and 2011 KWPCRF program which reduce energy use, reduce water use and/or reuse effluent "gray water", and reuse biosolids nutrients. In all cases the attached "Project Description – Green Traditional Projects" form must be completed by the consulting engineer for the project to quantify energy savings and/or water reuse. In some cases following review of the "Project Description" form, a "Business Case" may also be requested. A project design, or the design of an individual unit of a treatment plant, can be considered "categorically green" if the energy savings is 20% or more as compared to the current design in use.

Please note, federal grant funds cannot be used to match other federal grant funds. Therefore, any project receiving CDBG grant funding cannot receive principal forgiveness in the matching KWPCRF low interest loan. The KWPCRF loan funding to match the CDBG grant funding is provided from the KWPCRF non-federal funds "basic program". However, a specific project may receive an "earmark grant" from EPA and also receive "principal forgiveness" with FFY 2010 and FFY 2011 Federal loan funding, if the "earmark grant" funds receive low interest loan match funding from the KWPCRF non-federal funds "basic program".

Project designs that qualify for "traditional green" additional 25% principal forgiveness includes:

- Non-overflowing or discharging lagoons to replace existing mechanical treatment facilities.
- Expansion of an existing discharging lagoon system to become non-overflowing.
- The addition of solar powered or wind-driven mixers to existing or new wastewater treatment lagoons.
- Collection System I/I detection equipment. (Categorically green.) However sewer rehabilitation and repair design and construction does not qualify.
- Irrigation and other effluent reuse, including additional required treatment (if any) and storage prior to reuse, pumping and piping to off-plant reuse and/or irrigation sites. \*\* (Categorically green.) Irrigation equipment for effluent reuse on publically- owned land application sites is also an allowable cost.
- Land application of biosolids for reuse, including plant site storage and pumping facilities and piping to off-plant reuse site(s), or bio-solids hauling equipment.

- Sludge and/or biosolids composting prior to land application reuse.
- Sludge dewatering or drying prior to landfill disposal.
- Biosolids dewatering or drying prior to land application reuse.
- Energy efficient retrofits and upgrades to pumps and treatment processes. As an example, replacing standard motors with VFDs (or AFDs) in existing facilities qualifies, but simply specifying VFDs (or AFDs) in new facility designs does not qualify. (If the project achieves a 20% reduction in energy consumption it is categorically green.) (If the project achieves less than 20% reduction in energy consumption, a business case is required.)
- Energy audit studies of existing pumping and treatment facilities.
- Rehabilitation and upgrade of existing anaerobic digestion systems for methane recovery and reuse, including gas cleaning and dehydration facilities, on-site reuse equipment such as piping, boilers, engines and generators, and pumping and piping to off-plant reuse site(s). \*\*\* Also note, biogas powered combined heat and power (co-gen) should be considered.
- Septage and grease receiving facilities located at the wastewater treatment plant site, including pumping, piping, storage, and conditioning facilities. Municipally-owned grease storage and transfer facilities located at a site(s) remote from the wastewater treatment facility.
- Renewable energy production projects such as wind, solar, geothermal micro-hydroelectric, and biogas combined heat and power system (CHP) that provide power to a POTW. These may be located off the WWTP site. However the allowable cost is the pro-rated capacity necessary for the wastewater and/or water supply utility(s) only.
- Downspout disconnection to remove stormwater from sanitary and combined sewer systems. (Categorically green.)
- Installing or retrofitting water efficiency devices, such as plumbing fixtures and appliances. The use of "Water Sense" labeled products is the preferred choice. (Categorically green.)
- Water audits, and water conservation plans; recycling and water reuse projects that replace potable sources with non-potable sources. (Categorically green.)
- Retrofit or replace existing irrigation systems on publically-owned sites to more efficient landscape irrigation systems, including moisture and rain sensing controllers. (Categorically green.)

- \* Please note – in all cases the purchase of land or easements is not an allowable cost for funding.
- \*\* Irrigation equipment on privately-owned land application site is not an allowable cost for funding.
- \*\*\* Methane gas utilization equipment and piping at the off-site location is not an allowable cost for funding.



Project Description  
Green Traditional Projects  
Kansas Water Pollution Control Revolving Fund

Applicant Name:

Project Type:

Project Description:

Traditional Green Aspect: (yes/no)

- Energy Efficiency:
- Water Reuse:

Description of Green Infrastructure Component:

Calculation of Energy Savings: (Kwh/yr elec., MCF gas, or gallons of Fuel)

- Amount of energy saved:
- Value of energy reduction: \$ (attach calculations)
- % reduction for entire wastewater utility:

Total Project Cost Est. – Construction and Design Only:

Green Infrastructure Component Cost Est. – Construction and Design Only:

Prepared by: \_\_\_\_\_ Date: \_\_\_\_\_



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAR 02 2012

OFFICE OF WATER

MEMORANDUM

Subject: Procedures for Implementing Certain Provisions of EPA's Fiscal Year 2012 Appropriations Affecting the Clean Water (CWSRF) and Drinking Water State Revolving Fund (DWSRF) Programs

From: James A. Hanlon, Director  
Office of Wastewater Management (4204M)  
Cynthia A. Dougherty, Director  
Office of Ground Water and Drinking Water (4601M)

To: Water Management Division Directors  
Regions I – X

This is to provide Procedures on the implementation of the Clean Water (CWSRF) and Drinking Water (DWSRF) State Revolving Fund programs for FY 2012. Specifically, the Fiscal Year (FY) 2012 Consolidated Appropriations Act (P.L. 112-74), while containing provisions similar to those of previous years, changes the requirements of the programs regarding additional subsidization, the green project reserve and the Davis-Bacon requirements. The procedures have several key attachments which are referenced in the text at appropriate places. These procedures are effective immediately and should be reflected in all capitalization grants that include FY 2012 funds.

The State Revolving Fund programs represent EPA's participation in the capital financing of water infrastructure. Through the Drinking Water and Clean Water Needs Surveys, EPA, working with the States, has documented over \$600 billion in water infrastructure capital needs. During FY 2012 the Office of Water will be working with your Regional staff as well as the States to introduce improvements into our management of the SRF programs that will result in the more timely application, review and award of capitalization grants as well as the acceleration of financial assistance to individual projects.

The State Revolving Loan Programs continue to provide important low cost financial support to capital construction of drinking water and wastewater infrastructure. The procedures include the requirements of the FY 2012 Appropriations Act, the principles of the October 1, 2010, Sustainability Policy; and the Livability Principles resulting from the EPA-HUD-DOT Partnership. States may also consult EPA's *Planning for Sustainability: A Handbook for Water*

*and Wastewater Utilities* which describes steps that utilities can undertake to enhance their planning processes, improving their ability to make the best infrastructure choices up front.

Attachments to the procedures include the final FY 2012 Drinking Water SRF allotments (Attachment 4A) and the additional subsidization minimum and maximum amounts for each State. For the Clean Water SRF, this information, along with the minimum amount for each State for the Green Project Reserve, is attached in draft form. The Fiscal Year 2012 Consolidated Appropriations Act included a \$10 million rescission to the Clean Water SRF. Decisions regarding how the rescission will be implemented are pending. EPA will provide final Clean Water SRF amounts when those decisions are final.

Inquiries regarding the procedures should be directed to the respective program contacts for the Clean Water SRF (Sheila Platt, 202/564-0686) and for Drinking Water SRF (Peter Shanaghan, 202/564-3848).

Attachment

cc: SRF Branch Chiefs, Regions I-X  
SRF Program Coordinators, Regions I-X

# **Procedures for Implementing Certain Provisions of EPA's Fiscal Year 2012 Appropriations Affecting the Clean Water and Drinking Water State Revolving Fund Programs**

## **I. Purpose**

The Fiscal Year (FY) 2012 Consolidated Appropriations Act (P.L. 112-74) ("Appropriations Act") carries forward and amends requirements from previous fiscal year appropriations acts affecting both the Clean Water and the Drinking Water State Revolving Fund (SRF) programs for FY 2012. These procedures address the implementation of the requirements and set forth administration priorities.

## **II. Administration Priorities**

As a result of EPA's Clean Water and Safe Drinking Water Infrastructure Sustainability Policy released in October, 2010, EPA is working to enhance infrastructure planning by water sector utilities to improve the sustainability of infrastructure assets. Accordingly, EPA has recently issued *Planning for Sustainability: A Handbook for Water and Wastewater Utilities*. The Handbook describes a series of steps utilities can take to enhance their planning processes to ensure infrastructure investments are sustainable and support other relevant community priorities. EPA encourages States to work with potential SRF funding recipients and to provide funding support for robust system-wide planning processes that:

- consider the full life-cycle costs of a range of alternatives, including green infrastructure and conservation approaches,
- are consistent with community goals and objectives, and
- include a financial strategy to ensure that the infrastructure can be sufficiently operated, maintained and replaced over time.

Supporting robust planning processes can increase the sustainability of water infrastructure and increase the pipeline of projects meeting state funding priorities. The Handbook may provide the States with a useful tool in their outreach to potential SRF funding recipients; it is available at [http://water.epa.gov/infrastructure/sustain/sustainable\\_systems.cfm](http://water.epa.gov/infrastructure/sustain/sustainable_systems.cfm).

## **III. Application Requirements**

A State's Intended Use Plan (IUP) is required as part of its application for a FY 2012 capitalization grant. For both SRFs, the IUP must contain a description of the intended uses of additional subsidization. The IUP shall include the criteria the State plans to use in determining the type and amount of additional subsidy that will be made available to assistance recipients listed in the IUP. To the extent practicable, the projects that will receive the additional subsidy and the amount should be shown in the IUP. Any eligible recipient of SRF funds may receive the

additional subsidy, however priority for additional subsidy should be given to projects as described in Section IV.B.

For the CWSRF, the IUP must also contain a description of the intended uses of the Green Project Reserve (GPR), as explained in Section IV.A.1. For the DWSRF, the FY 2012 Appropriations Act does not require States to fund green projects. As discussed in more detail in Section IV.A.2., EPA encourages States to continue funding green projects with the DWSRF. If a State exercises its discretion to fund green projects, the IUP should reflect this decision by identifying those projects which are “green” according to the criteria that the State chooses to use and noting what the criteria are.

The Appropriations Act links the percentage requirements for GPR for the CWSRF and the additional subsidy for both SRFs to a single year’s appropriation. Therefore, requirements must be met through projects on the FY 2012 IUP and credits for these requirements cannot be banked.

#### **IV. FY 2012 Requirements**

##### **A. Green Project Reserve (GPR)**

###### **1. CWSRF**

The Appropriations Act states that: “*Provided*, That for fiscal year 2012, to the extent there are sufficient eligible project applications, not less than 10 percent of the funds made available under this title to each State for Clean Water State Revolving Fund capitalization grants shall be used by the State for projects to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities.” These four categories of projects are the components of the GPR.

Criteria for determining CWSRF GPR eligibility can be found in Attachment 2, “2012 Clean Water State Revolving Fund 10% Green Project Reserve: Guidance for Determining Project Eligibility”. Projects clearly eligible for GPR are known as categorically eligible projects. A list of categorically eligible projects can be found in the GPR guidance mentioned above. A project that is not categorically eligible will need a business case. A business case needs to provide a well documented justification for a project to be considered a GPR project. States must review all business cases to determine GPR eligibility and post them on the State’s website by the end of the quarter in which the assistance agreement is made.

A State will have met the 10 percent requirement when an amount equal to at least 10 percent of its FY 2012 capitalization grant allotment is in executed assistance agreements for qualifying GPR projects. States may not decline to consider funding applications for qualified GPR projects unless the 10 percent requirement has been met. Because State CWSRF programs are not required to select projects in priority order, States are required to select GPR eligible projects that equal at least 10 percent of the FY 2012 capitalization grant, regardless of the projects’ ranking in the CWSRF State priority setting system. Please note that States cannot use

State level prohibitions, whether based on State statute, regulation, or policy, on funding the types of projects targeted by the GPR as a justification for insufficient applications.

If a state makes a good faith solicitation effort in the development of its intended use plan (IUP) but is unable to identify eligible GPR projects in an amount equal to at least 10 percent of its capitalization grant, then the state will have satisfied the GPR requirement. A good faith solicitation must be open to all GPR eligible projects in each of the four GPR categories. The state's annual open solicitation for projects will be deemed sufficient for these purposes as long as that solicitation was open to all GPR eligible projects in each of the four GPR categories. The state must document the GPR solicitation process in its IUP and explain why GPR projects totaling at least 10 percent of the capitalization grant were not able to be funded. Any state not meeting the 10 percent requirement must document in its annual report how it will expand its GPR solicitation plan for the following year.

If, at the time of grant award, a state has not identified GPR projects in an amount equal to at least 10 percent of their capitalization grant, and has not made a good faith solicitation effort in the development of its IUP, then the grant award is conditioned that the state must do so before it can take payment on that 10 percent. Once the state demonstrates a good faith effort to solicit projects in each of the four GPR categories, if it is still unable to identify projects totaling at least 10 percent of the capitalization grant, then it has satisfied the requirement. The state must document the GPR solicitation process and explain why GPR projects totaling 10 percent of the capitalization grant were unable to be funded. Again, any state not meeting the 10 percent requirement must expand its GPR solicitation plan for the following year.

If a state has identified in its IUP at the time of grant award GPR eligible projects in an amount equal to at least 10 percent of its capitalization grant, but projects are unable to proceed, the state should first turn to other qualified GPR projects on its priority list. If no other qualified GPR projects are ready to proceed at that time, then the state has satisfied the GPR requirement.

The following describes the roles and responsibilities for States, EPA Regions and EPA Headquarters in meeting the GPR requirement.

State Roles: States are responsible for proactively soliciting projects that satisfy the GPR requirements. After projects are ranked and selected, the States will include a list of GPR projects in the IUP that clearly identifies categorical projects and those that require a business case. The business cases for non-categorical GPR projects do not need to accompany the IUP through the public review process nor do they need to be submitted to EPA. States are responsible for reviewing all GPR business cases and posting them on the State's website. The posting of a business case must occur by the end of the quarter in which the loan is made.

EPA Regional Role: EPA reviews the list of GPR projects in the IUP to ensure the projects listed as categorical GPR projects match the 2012 GPR Guidance and to ensure that States are meeting the 10 percent GPR requirement. During the State annual review, Regions

will review all business cases and evaluate compliance with the GPR requirement. In addition to reviewing business cases, Regions will select at least one GPR project file for review each year.

EPA Headquarters Role: EPA Headquarters has developed Procedures and GPR Eligibility Guidance (Attachment 2) that establish eligibility for use of the GPR and will help States identify GPR projects.

## **2. DWSRF**

The Appropriations Act states: “*Provided further*, That for fiscal year 2012, funds made available under this title to each State for Drinking Water State Revolving Fund capitalization grants may, at the discretion of each State, be used for projects to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities.”

EPA encourages States to continue to fund projects and/or portions of projects as “green.” Where the State chooses at its discretion to fund projects as green, the State defines what qualifies as a green project within the four categories identified in the law: green infrastructure, water efficiency or energy efficiency improvements, and environmentally innovative activities. States that choose to fund projects as green may develop their own criteria for what qualifies as a green project within these categories; use the criteria in existing State DWSRF “green” programs; or use the body of information (guidance and reports) that EPA created for the GPR when it was mandatory under ARRA and in 2010 and 2011. If a State exercises its discretion to fund green projects, the IUP should reflect this decision by identifying those projects which are “green” according to the criteria that the State chooses to use and noting what the criteria are. States should report green projects to the DWSRF Projects and Benefits Reporting System (PBR). As the GPR is not mandatory for the DWSRF, a State’s decision to fund green projects does not supersede the priorities for use of the funds specified in the law. As specified in the law, States should prioritize by projects that (i) address the most serious risk to human health, (ii) are necessary to ensure compliance with law, and (iii) assist systems most in need on a per household basis according to state affordability criteria. Green projects may include portions of projects as well as be entire projects.

### **B. Additional Subsidies**

The Appropriations Act states: “*Provided further*, That not less than 20 percent but not more than 30 percent of the funds made available under this title to each State for Clean Water State Revolving Fund capitalization grants and not less than 20 percent but not more than 30 percent of the funds made available under this title to each State for Drinking Water State Revolving Fund capitalization grants shall be used by the State to provide additional subsidy to eligible recipients in the form of forgiveness of principal, negative interest loans, or grants (or any combination of these), and shall be so used by the State only where such funds are provided as initial financing for an eligible recipient or to buy, refinance, or restructure the debt obligations of eligible recipients only where such debt was incurred on or after the date of

enactment of this Act, except that for the Clean Water State Revolving Fund capitalization grant appropriation this section shall only apply to the portion that exceeds \$1,000,000,000.”

## 1. Targeting Subsidy

EPA recognizes that the first priority for States is protection of water quality (in the CWSRF) and public health (in the DWSRF) based on the Clean Water Act and Safe Drinking Water Act, respectively. The additional subsidies provision in the Appropriations Act provides an opportunity for States to use the subsidy assistance to further additional objectives that supplement but do not replace the statutory objectives above. EPA’s Clean Water and Safe Drinking Water Infrastructure Sustainability Policy (October, 2010) and relevant provisions of the HUD-DOT-EPA Partnership Agreement (June, 2009) provide the basis of EPA’s policy advice to the States on the use of the additional subsidy.

The Sustainability Policy encourages States to target the additional subsidies to communities that could otherwise not afford an SRF loan. These communities may include, for example, disadvantaged communities or environmental justice communities. The Policy also encourages States to use their subsidy authority to fund the development of plans using the Planning for Sustainability Handbook. In addition, principles 4, 5, and 6 of the Partnership Agreement provide the following advice:

**Support existing communities.** Target federal funding toward existing communities—through strategies like transit oriented, mixed-use development, and land recycling—to increase community revitalization and the efficiency of public works investments and safeguard rural landscapes.

**Coordinate and leverage federal policies and investment.** Align federal policies and funding to remove barriers to collaboration, leverage funding, and increase the accountability and effectiveness of all levels of government to plan for future growth, including making smart energy choices such as locally generated renewable energy.

**Value communities and neighborhoods.** Enhance the unique characteristics of all communities by investing in healthy, safe, and walkable neighborhoods—rural, urban, or suburban.

The State Annual Report must include an explanation as to how the State used the additional subsidy. This reporting requirement is outlined in a required capitalization grant condition outlined in attachment 1.

## 2. Types of Additional Subsidies

- i. **Principal Forgiveness.** A SRF may provide assistance in the form of principal forgiveness. Principal forgiveness must be specified at the execution of the loan agreement for the amount forgiven to be counted against the total required to be provided as additional subsidization. The



amount counted against the requirement is the amount of principal forgiven.

- ii. **Negative-Interest Loans.** A SRF may provide assistance in the form of negative-interest loans. A negative-interest loan is a loan for which the rate of interest is such that the total payments over the life of the loan are less than the principal of the loan. The negative-interest rate must be included in the loan agreement at the time of execution to be counted against the total required to be provided as additional subsidization. The amount counted against the requirement is the difference between the principal of the loan and the total payments expected over the life of the loan.
- iii. **Grants.** A SRF may provide assistance in the form of a grant. The grant must be provided at the time of assistance agreement execution to be counted against the total required to be provided as additional subsidization. The amount counted against the requirement is the total grant amount included in the agreement. It should be noted that grant recipients under this provision are considered “subgrantees” for the purposes of EPA’s grant regulations, as detailed below in section 5.

**3. Draft Calculation of Additional Subsidization for the CWSRF program (These numbers are draft pending a final decision regarding any impact of the rescission requirements contained in the Appropriations Act and will be finalized in a forthcoming memorandum).**

- i. Of the \$1,468,806,000 provided by the FY 2012 Consolidated Appropriations, \$1,384,815,000 is available for capitalization grants to the 51 CWSRF programs after accounting for the set-asides, territory allocations, and rescissions. The additional subsidization provision only applies to \$384,815,000, or the portion of the \$1,384,815,000 available for capitalization grants that exceeds \$1 billion.
- ii. Nationally, the maximum amount of additional subsidization that may be provided is \$115,444,500, which is 30% of \$384,815,000, and the minimum amount that must be provided is \$76,963,000, which is 20 percent of \$384,815,000. The CWSRF programs should refer to the table included in a forthcoming policy memorandum for State specific amounts of maximum and minimum additional subsidization. A draft copy of the table is attached (Attachment 3).

**4. Calculation of Additional Subsidization for the DWSRF program.**

Nationally, the maximum amount of additional subsidization that may be provided is \$262,528,800, which is 30% of \$875,096,000, and the minimum amount that must be provided is \$175,019,200, which is 20 percent of

\$875,096,000. The DWSRF programs should refer to the table included in Attachment 4B.

## **5. Laws, Regulations and Requirements for Assistance Agreements that are in the Form of Grants**

The 2012 Consolidated Appropriations carries forward language that allows States to provide grants to eligible recipients. All EPA grants must comply with certain Federal law, Executive Orders, and OMB Circulars. A detailed description of these laws, orders and implementing regulations is available through the OGD Grants Intranet website at <http://intranet.epa.gov/ogd> or on the internet at <http://www.epa.gov/ogd/grants/regulations.htm>.

- i. The regulations at 40 CFR Part 31 apply to grants and cooperative agreements awarded to State and local (including tribal) governments. The regulations at 40 CFR Part 30 apply to grants with nonprofit organizations and with non-governmental for-profit entities. Note that the latter grants cannot be made with DWSRF funds except to eligible public water systems.
- ii. EPA's Assistance Administration Manual 5700 outlines Agency policy on the award and management of subawards, "*Policy on Subawards Under Assistance Agreement*". The policy applies to subaward work under awards and supplemental amendments issued after May 15, 2007. The policy clarifies subrecipient eligibility, addresses subaward competition requirements, and provides guidance regarding the distinctions between procurement contracts and subawards. It also includes special considerations regarding subawards to 501(c)(4) and for-profit organizations, and subawards to foreign/international organizations or any entity performing work in a foreign country. The policy is primarily implemented through an administrative National Term and Condition for Subawards. The subaward policy can be found at <http://intranet.epa.gov/ogd/> (under Update 3) and at <http://www.epa.gov/ogd/grants/regulations.htm>.

## **6. Grants to Non-Profit Organizations.**

Funds appropriated can, under certain circumstances, be used for grants to nonprofit organizations. Such grants to nonprofit organizations cannot be made with DWSRF funds except to eligible public water systems. Grants cannot be awarded to a nonprofit organization classified by the Internal Revenue Service as a 501(c)(4) organization unless that organization certifies that it will not engage in lobbying activities, even with their own funds (see Section 18 of the Lobbying Disclosure Act, 2 U.S.C.A § 1611).

### **C. Davis-Bacon Requirements**

The Appropriations Act states: “For fiscal year 2012 and each fiscal year thereafter, the requirements of section 513 of the Federal Water Pollution Control Act (33 U.S.C. 1372) shall apply to the construction of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund as authorized by title VI of that Act (33 U.S.C. 1381 et seq.), or with assistance made available under section 205(m) of that Act (33 U.S.C. 1285(m)), or both.

“For fiscal year 2012 and each fiscal year thereafter, the requirements of section 1450(e) of the Safe Drinking Water Act (42 U.S.C. 300j-9(e)) shall apply to any construction project carried out in whole or in part with assistance made available by a drinking water treatment revolving loan fund as authorized by section 1452 of that Act (42 U.S.C. 300j-12).”

The Appropriations Act applies Davis-Bacon wage requirements to the construction of treatment works carried out in whole or in part with assistance made by a CWSRF program during FY 2012 and thereafter. Davis-Bacon wage requirements apply to construction of all projects carried out in whole or in part with assistance made available by a DWSRF program during FY 2012 and thereafter. Unlike the requirements of previous years’ appropriations acts, this requirement is now permanent for both programs.

For background regarding this provision’s application in previous years, please refer to EPA memoranda of November 30, 2009, and May 20, 2011 (Attachment 5).

EPA is also adding the attached terms and conditions regarding wage rate requirements to all CWSRF and DWSRF FY 2012 capitalization grants. Additional information on compliance with the Davis-Bacon requirements is included in Attachment 6. In FY 2012, EPA will provide, as needed, additional technical assistance.

### **D. Reporting Requirements**

The conference committee’s Joint Explanatory Statement for the Appropriations Act directs the Agency to “report on how EPA and the States have used the additional subsidization authority, including information on the number and amounts of loans awarded with additional subsidization, recipient communities, and descriptions of projects funded.” States shall report quarterly in the CWSRF Benefits Reporting (CBR) and DWSRF Project and Benefits Reporting (PBR) systems on the use of all SRF funds. This information will also need to be included in the Annual Report. Quarterly reporting shall include use of the funds for the GPR and Additional Subsidization as described in paragraph D.1. below, as well as information on the environmental and public health benefits of SRF assistance agreements, as described in paragraph D.2.

## **1. Data Elements**

The CBR/PBR and the Annual Report must contain information on the progress made in meeting the additional subsidization requirements for both SRFs and the GPR requirements for the CWSRF, as well as any green projects funded by the State for the DWSRF. (Note: For the DWSRF, it is the State's choice to fund green projects. If a State decides to fund green projects, the data about the projects must be reported to PBR.) The following data elements must be entered quarterly into CBR/PBR starting with the first quarter in which the assistance agreement is made and a list containing the following information must be included in State Annual Reports. (Additional clarification on the items listed below is provided in CBR/PBR.)

- a. Assistance Recipient Name
- b. Total amount of SRF assistance provided
- c. Project name and identification number
- d. Project Location
- e. Type of additional subsidy (grant, principal forgiveness, negative interest).
- f. Amount of additional subsidy
- g. Y/N – Would the recipient have been able to afford a loan without the additional subsidy (using the States' own criteria for making this determination, such as use of their SRF loan evaluation criteria)?

For projects that receive funding under the Green Project Reserve for the CWSRF or which are funded as green projects at the State's discretion for the DWSRF, the following additional data elements must be entered quarterly into CBR/PBR and a list containing the following additional information must be included in State Annual Reports. (Additional clarification on the items below is provided in CBR/PBR.)

- a. Type of project (green infrastructure, water efficiency, energy efficiency, environmentally innovative).
- b. Amount of SRF funding for GPR portion of the project
- c. Of the total amount of GPR funding, the amount of subsidy provided (if any)
- d. A brief description of the project (i.e., rain garden, renewable energy at POTW, water efficient fixtures).
- e. Population served by the project (not required for CWSRF nonpoint source projects)

## **2. Environmental/Public Health Benefits Reporting**

In 2005, all 51 CWSRF programs agreed to use a suite of environmental indicators to show how their CWSRF projects impact water quality and public health. The CBR system was developed based on these indicators. States shall report quarterly in CBR on the environmental benefits of all assistance agreements. The specific required data elements are listed in Attachment 7.

In FY 2010, the DWSRF program identified project level data to be reported quarterly to the Drinking Water Project and Benefits Reporting System (PBR) for the base program. These data elements will be used for states' quarterly reporting in FY 2012. The data elements are identified in Attachment 8 and will be used for reporting environmental/public health benefits of DWSRF assistance agreements.

The data elements identified in Attachments 7 and 8 must be reported in the Annual Report. Summary reports, compiling the quarterly data, can be generated by CBR/PBR and may be included as an attachment to the Annual Report to meet this reporting requirement.

### **E. Grant Conditions**

The Appropriations Act includes requirements that are not in the promulgated regulations for either SRF; EPA will ensure implementation of these requirements through terms and conditions that will be included in the capitalization grant award. Additional clarification is provided in these Procedures and may be provided as needed hereafter, generally through guidance that further explains means of compliance with the terms and conditions. Grant conditions to be included in FY 2012 capitalization grants are attached (Attachment 1).

Attachments

## **ATTACHMENT 1**

### **Required Grant Conditions**

1. The recipient of funds for the State Revolving Funds from P.L. 112-74, Consolidated Appropriations Act, 2012, agrees to comply with all requests for data related to the use of the funds under Subchapter VI of the Clean Water Act (CWA) or Section 1452 of the Safe Drinking Water Act (SDWA), and to report all uses of the funds no less than quarterly, as EPA specifies for the CWSRF Benefits Reporting database and the Drinking Water Project Benefits Reporting database. This reporting shall include but not be limited to data with respect to compliance with the Green Project Reserve and the DWSRF discretionary Green Program and additional subsidization requirements as specified in the Consolidated Appropriations Act, 2012 and the Joint Explanatory Statement, and as outlined in the FY 2012 Procedures document, and other data as necessary to carry out the authorities cited in this Grant Condition.
2. In accordance with 40 CFR 31.40, 40 CFR 35.3165, and 40 CFR 35.3570, the recipient agrees to provide in its Annual Report information regarding key project characteristics, milestones, and environmental/public health protection results in the following areas: 1) achievement of the outputs and outcomes established in the Intended Use Plan; 2) the reasons for delays if established outputs or outcomes were not met; 3) any additional pertinent information on environmental results; 4) compliance with the Green Project Reserve requirement as outlined in the FY 2012 Procedures document for the CWSRF, and for the DWSRF program, whether the State funded green projects, and what criteria were used; and 5) compliance with the additional subsidization requirement as described in the FY 2012 Procedures document.
3. Preamble:

The FY 2012 Appropriation to the CWSRF and DWSRF programs requires that a portion of the capitalization grant funds be used to provide additional subsidization, while relying on the purposes of the Funds in their underlying acts.

The application of the additional subsidies – in the form in which they are authorized in the FY 2012 Appropriations Act – to the base SRF programs raises important issues for the underlying SRF programs. While the DWSRF program has since its inception offered discretion to States to

provide additional subsidization, that authority was closely circumscribed by requirements that communities assisted meet the State's definition of "disadvantaged," and that the subsidies provided in any year could not exceed 30 percent of the capitalization grant. In contrast, the FY 2012 Appropriations Act requires States to provide not less than 20 percent and not more than 30 percent of the amount of their DWSRF capitalization grants as additional subsidies. For the CWSRF, not less than 20 percent and not more than 30 percent of the States total capitalization grants that exceed \$1,000,000,000 must be used for additional subsidies. For both programs, additional subsidies can be provided to any eligible recipient of SRF assistance, although priority for additional subsidies should be given to communities that could not otherwise afford eligible projects or which are defined by the State as disadvantaged consistent with Section IV. B. of the 2012 procedures.

Under these circumstances, in which a large amount of base program capitalization grant funds will not revolve, it is prudent to include additional guidance in the capitalization agreements with States that ensure that the subsidies are funding infrastructure that is sustainable (not enabling the expansion of centralized infrastructure to accommodate growth while failing to adequately repair, replace, and upgrade infrastructure in existing communities which are not otherwise able to afford such projects). Section 602(a) of the CWA and section 1452(a)(3)(A)(i) of SDWA gives the authority to add such specifications to the capitalization grant. CWA Section 602(a) specifies that the "State shall enter into an agreement with the Administrator which shall include but not be limited to the specifications set forth in subsection (b)...." SDWA Section 1452(g)(3)(A) authorizes EPA to publish guidance "to ensure that each state commits and expends funds allotted to the State under this section as efficiently as possible." Therefore, EPA is adding a grant condition to all FY 2012 CWSRF and DWSRF capitalization grants.

a. The recipient agrees to use funds provided by this grant to provide additional subsidization in the form of principal forgiveness, negative interest rate loans, or grants, in accordance with P.L. 112-10 as follows:

(1) Clean Water State Revolving Fund capitalization recipients agree to use at least 5.55 percent, and no more than 8.33 percent of the funds provided by this grant to provide additional subsidization. (For the exact amount, see Attachment 3 to the 2012 Procedures.)

(2) Drinking Water State Revolving Fund capitalization grant recipients agree to use between 20 and 30 percent of the funds provided by this grant to provide additional subsidization.

b. Priority for additional subsidies should be given to communities that could not otherwise afford such projects or that are defined by the State as disadvantaged. To further ensure sustainability of eligible projects receiving additional subsidies, these subsidies should be directed to: 1) repair, replacement, and upgrade of infrastructure in existing communities; 2) investigations, studies, or plans that improve the technical, financial and managerial capacity of the assistance recipient to operate, maintain, and replace financed infrastructure; and/or 3) preliminary planning, alternatives assessment and eligible capital projects that reflect the full life cycle costs of infrastructure assets, conservation of natural resources, and alternative approaches to integrate natural or “green” systems into the built environment. The recipient agrees to provide in its Annual Report an explanation as to how they did or did not address this provision.

4. For the CWSRF, the recipient agrees to make a timely and concerted good faith solicitation for projects that address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities. A good faith solicitation must be open to all GPR eligible projects in each of the four GPR categories. The State’s annual open solicitation for projects will be deemed sufficient for these purposes as long as that solicitation was open to all GPR eligible projects in each of the four GPR categories. The recipient agrees to include in its IUP such qualified projects, or components of projects, that total an amount at least equal to 10% of its capitalization grant. The state must document the GPR solicitation process in its IUP and Annual Report and explain , if applicable, why GPR projects totaling at least 10 percent of the capitalization grant were not able to be funded. Any State not meeting the 10 percent requirement must outline in the Annual Report how they will expand their GPR solicitation for the following year.

5. Wage Rate Requirements:

a. CWSRF: The recipient agrees to include in all agreements to provide assistance for the construction of treatment works carried out in whole or in part with such assistance made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.), or with such assistance made available under section



205(m) of that Act (33 U.S.C. 1285(m)), or both, a term and condition requiring compliance with the requirements of section 513 of that Act (33 U.S.C. 1372) in all procurement contracts and sub-grants, and require that loan recipients, procurement contractors and sub-grantees include such a term and condition in subcontracts and other lower tiered transactions. All contracts and subcontracts for the construction of treatment works carried out in whole or in part with assistance made available as stated herein shall insert in full in any contract in excess of \$2,000 the contract clauses as attached hereto entitled "Wage Rate Requirements Under FY 2012 Appropriation." This term and condition applies to all agreements to provide assistance under the authorities referenced herein, whether in the form of a loan, bond purchase, grant, or any other vehicle to provide financing for a project, where such agreements are executed on or after October 30, 2009.

b. DWSRF: The recipient agrees to include in all agreements to provide assistance for any construction project carried out in whole or in part with such assistance made available by a drinking water revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12), a term and condition requiring compliance with the requirements of section 1450(e) of the Safe Drinking Water Act (42 U.S.C.300j-9(e)) in all procurement contracts and sub-grants, and require that loan recipients, procurement contractors and sub-grantees include such a term and condition in subcontracts and other lower tiered transactions All contracts and subcontracts for any construction project carried out in whole or in part with assistance made available as stated herein shall insert in full in any contract in excess of \$2,000 the contract clauses as attached hereto entitled "Wage Rate Requirements Under FY 2012 Appropriation." This term and condition applies to all agreements to provide assistance under the authorities referenced herein, whether in the form of a loan, bond purchase, grant, or any other vehicle to provide financing for a project, where such agreements are executed on or after October 30, 2009.

## **ATTACHMENT 2**

### **2012 Clean Water State Revolving Fund 10% Green Project Reserve: Guidance for Determining Project Eligibility**

I. Introduction: The Fiscal Year (FY) 2012 Appropriation Act (P.L. 112-74) included additional requirements affecting the Clean Water State Revolving Fund (SRF) program. This attachment is included in the *Procedures for Implementing Certain Provisions of EPA's Fiscal Year 2012 Appropriation Affecting the Clean Water and Drinking Water State Revolving Fund Programs*. This attachment includes the details for determining green project reserve (GPR) eligibility for the Clean Water SRF program.

Public Law 112-74 states: “*Provided*, That for fiscal year 2012, to the extent there are sufficient eligible project applications, not less than 10 percent of the funds made available under this title to each State for Clean Water State Revolving Fund capitalization grants shall be used by the State for projects to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities.” These four categories of projects are the components of the Green Project Reserve (GPR).

II. GPR Goals: Congress’ intent in enacting the GPR is to direct State investment practices in the water sector to guide funding toward projects that utilize green or soft-path practices to complement and augment hard or gray infrastructure, adopt practices that reduce the environmental footprint of water and wastewater treatment, collection, and distribution, help utilities adapt to climate change, enhance water and energy conservation, adopt more sustainable solutions to wet weather flows, and promote innovative approaches to water management problems. Over time, GPR projects could enable utilities to take savings derived from reducing water losses and energy consumption, and use them for public health and environmental enhancement projects. Additionally, EPA expects that green projects will help the water sector improve the quality of water services without putting additional strain on the energy grid, and by reducing the volume of water lost every year.

III. Background: For the FY 2010 GPR Guidance, EPA used an inclusive approach to determine what is and is not a ‘green’ water project. Wherever possible, this guidance references existing consensus-based industry practices to provide assistance in developing green projects. Input was solicited from State-EPA and EPA-Regional workgroups and the water sector. EPA staff also reviewed approaches promoted by green practice advocacy groups and water associations, and green infrastructure implemented by engineers and managers in the water sector. EPA also assessed existing ‘green’ policies within EPA and received input from staff in those programs to determine how EPA funds could be used to achieve shared goals.

The FY 2012 SRF GPR Guidance provides States with information needed to determine which projects count toward the GPR requirement. The intent of the GPR Guidance is to describe projects and activities that fit within the four specific categories listed in the FY 2012

Appropriations Act. This guidance defines each category of GPR projects and lists projects that are clearly eligible for GPR, heretofore known as categorically eligible projects. For projects that do not appear on the list of categorically projects, they may be evaluated for their eligibility within one of the four targeted types of GPR eligible projects based upon a business case that provides clear documentation (see the *Business Case Development* sections in Parts A & B below).

GPR may be used for planning, design, and/or building activities. Entire projects, or the appropriate discrete components of projects, may be eligible for GPR. Projects do not have to be part of a larger capital project to be eligible. All projects or project components counted toward the GPR requirement must clearly advance one or more of the objectives articulated in the four categories of GPR discussed below.

The Green Project Reserve sets a new precedent for the SRFs by targeting funding towards projects that States may not have funded in prior years. Water quality benefits from GPR projects rely on proper operation and maintenance to achieve the intended benefits of the projects and to achieve optimal performance of the project. EPA encourages states and funding recipients to thoroughly plan for proper operation and maintenance of the projects funded by the SRFs, including training in proper operation of the project. It is noted, however, that the SRFs cannot provide funding for operation and maintenance costs, including training, in the SRF assistance agreements.

### **CWSRF Eligibility Principles**

**State SRF programs are responsible for identifying projects that count toward GPR. The following overarching principles, or decision criteria, apply to all projects that count toward GPR and will help states identify projects.**

0.1 All GPR projects must otherwise be eligible for CWSRF funding. The GPR requirement does not create new funding authority beyond that described in Title VI of the CWA. Consequently, a subset of 212, 319 and 320 projects will count towards the GPR. The principles guiding CWSRF funding eligibility include:

- 0.2 All Sec 212 projects must be consistent with the definition of “treatment works” as set forth in section 212 of the Clean Water Act (CWA).
  - 0.2-1 All section 212 projects must be publicly owned, as required by CWA section 603(c)(1).
  - 0.2-2 All section 212 projects must serve a public purpose.
  - 0.2-3 POTWs as a whole are utilized to protect or restore water quality. Not all portions of the POTW have a direct water quality impact in and of themselves (i.e. security fencing). Consequently, POTW projects are not required to have a direct water quality benefit, though most of them will.
- 0.3 Eligible nonpoint source projects implement a nonpoint source management program under an approved section 319 plan or the nine element watershed plans required by the 319 program.
  - 0.3-1 Projects prevent or remediate nonpoint source pollution.
  - 0.3-2 Projects can be either publicly or privately owned and can serve either public or private purposes. For instance, it is acceptable to fund land conservation activities that preserve the water quality of a drinking water source, which represents a public purpose project. It is also acceptable to fund agricultural BMPs that reduce nonpoint source pollution, but also improve the profitability of the agricultural operation. Profitability is an example of a private purpose.
  - 0.3-3 Eligible costs are limited to planning, design and building of capital water quality projects. The CWSRF considers planting trees and shrubs, purchasing equipment, environmental cleanups and the development and initial delivery of education programs as capital water quality projects. Daily maintenance and operations, such as expenses and salaries are not considered capital costs.
  - 0.3-4 Projects must have a direct water quality benefit. Implementation of a water quality project should, in itself, protect or improve water quality. States should be able to estimate the quantitative and/or qualitative water quality benefit of a nonpoint source project.
  - 0.3-5 Only the portions of a project that remediate, mitigate the impacts of, or prevent water pollution or aquatic or riparian habitat degradation should be funded. Where water quantity projects improve water quality (e.g. reduction of flows from impervious surfaces that adversely affect stream health, or the modification of irrigation systems to reduce runoff and leachate from irrigated lands), they would

be considered to have a water quality benefit. In many cases, water quality protection is combined with other elements of an overall project. For instance, brownfield revitalization projects include not only water quality assessment and cleanup elements, but often a redevelopment element as well. Where the water quality portion of a project is clearly distinct from other portions of the project, only the water quality portion can be funded by the CWSRF.

- 0.3-6 Point source solutions to nonpoint source problems are eligible as CWSRF nonpoint source projects. Section 319 Nonpoint Source Management Plans identify sources of nonpoint source pollution. In some cases, the most environmentally and financially desirable solution has point source characteristics and requires an NPDES discharge permit. For instance, a septage treatment facility may be crucial to the proper maintenance and subsequent functioning of decentralized wastewater systems. Without the septage treatment facility, decentralized systems are less likely to be pumped, resulting in malfunctioning septic tanks.
- 0.4 Eligible projects under section 320 implement an approved section 320 Comprehensive Conservation Management Plan (CCMP).
  - 0.4-1 Section 320 projects can be either publicly or privately owned.
  - 0.4-2 Eligible costs are limited to capital costs.
  - 0.4-3 Projects must have a direct benefit to the water quality of an estuary. This includes protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on water, and requires the control of point and nonpoint sources of pollution to supplement existing controls of pollution.
  - 0.4-4 Only the portions of a project that remediate, mitigate the impacts of, or prevent water pollution in the estuary watershed should be funded.
- 0.5 GPR projects must meet the definition of one of the four GPR categories. The Individual GPR categories do not create new eligibility for the CWSRF. The projects that count toward GPR must otherwise be eligible for CWSRF funding.
- 0.6 GPR projects must further the goals of the Clean Water Act.<sup>1</sup>

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<sup>1</sup> Drinking Water Utilities can apply for CWSRF funding

## **CWSRF Technical Guidance**

**The following sections outline the technical aspects for the CWSRF Green Project Reserve. It is organized by the four categories of green projects: green infrastructure, water efficiency, energy efficiency, and environmentally innovative activities. Categorically green projects are listed, as well as projects that are ineligible. Design criteria for business cases and example projects that would require a business case are also provided.**

### **1.0 GREEN INFRASTRUCTURE**

- 1.1 Definition: Green stormwater infrastructure includes a wide array of practices at multiple scales that manage wet weather and that maintain and restore natural hydrology by infiltrating, evapotranspiring and harvesting and using stormwater. On a regional scale, green infrastructure is the preservation and restoration of natural landscape features, such as forests, floodplains and wetlands, coupled with policies such as infill and redevelopment that reduce overall imperviousness in a watershed. On the local scale green infrastructure consists of site- and neighborhood-specific practices, such as bioretention, trees, green roofs, permeable pavements and cisterns.
- 1.2 Categorical Projects
  - 1.2-1 Implementation of green streets (combinations of green infrastructure practices in transportation rights-of-ways), for either new development, redevelopment or retrofits including: permeable pavement<sup>2</sup>, bioretention, trees, green roofs, and other practices such as constructed wetlands that can be designed to mimic natural hydrology and reduce effective imperviousness at one or more scales. Vector trucks and other capital equipment necessary to maintain green infrastructure projects.
  - 1.2-2 Wet weather management systems for parking areas including: permeable pavement<sup>2</sup>, bioretention, trees, green roofs, and other practices such as constructed wetlands that can be designed to mimic natural hydrology and reduce effective imperviousness at one or more scales. Vector trucks and other capital equipment necessary to maintain green infrastructure projects.
  - 1.2-3 Implementation of comprehensive street tree or urban forestry programs, including expansion of tree boxes to manage additional stormwater and enhance tree health.
  - 1.2-4 Stormwater harvesting and reuse projects, such as cisterns and the systems that allow for utilization of harvested stormwater, including pipes to distribute stormwater for reuse.
  - 1.2-5 Downspout disconnection to remove stormwater from sanitary, combined sewers and separate storm sewers and manage runoff onsite.
  - 1.2-6 Comprehensive retrofit programs designed to keep wet weather discharges out of all types of sewer systems using green infrastructure technologies and approaches such as green roofs, green walls, trees and urban reforestation, permeable

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<sup>2</sup> The total capital cost of permeable pavement is eligible, not just the incremental additional cost when compared to impervious pavement.

- pavements and bioretention cells, and turf removal and replacement with native vegetation or trees that improve permeability.
- 1.2-7 Establishment or restoration of permanent riparian buffers, floodplains, wetlands and other natural features, including vegetated buffers or soft bioengineered stream banks. This includes stream day lighting that removes natural streams from artificial pipes and restores a natural stream morphology that is capable of accommodating a range of hydrologic conditions while also providing biological integrity. In highly urbanized watersheds this may not be the original hydrology.
  - 1.2-8 Projects that involve the management of wetlands to improve water quality and/or support green infrastructure efforts (e.g., flood attenuation).<sup>3</sup>
    - 1.2-8a Includes constructed wetlands.
    - 1.2-8b May include natural or restored wetlands if the wetland and its multiple functions are not degraded and all permit requirements are met.
  - 1.2-9 The water quality portion of projects that employ development and redevelopment practices that preserve or restore site hydrologic processes through sustainable landscaping and site design.
  - 1.2-10 Fee simple purchase of land or easements on land that has a direct benefit to water quality, such as riparian and wetland protection or restoration.
- 1.3 Projects That Do Not Meet the Definition of Green Infrastructure
- 1.3-1 Stormwater controls that have impervious or semi-impervious liners and provide no compensatory evapotranspirative or harvesting function for stormwater retention.
  - 1.3-2 Stormwater ponds that serve an extended detention function and/or extended filtration. This includes dirt lined detention basins.
  - 1.3-3 In-line and end-of-pipe treatment systems that only filter or detain stormwater.
  - 1.3-4 Underground stormwater control and treatment devices such as swirl concentrators, hydrodynamic separators, baffle systems for grit, trash removal/floatables, oil and grease, inflatable booms and dams for in-line underground storage and diversion of flows.
  - 1.3-5 Stormwater conveyance systems that are not soil/vegetation based (swales) such as pipes and concrete channels. Green infrastructure projects that include pipes to collect stormwater may be justified as innovative environmental projects pursuant to Section 4.4 of this guidance.
  - 1.3-6 Hardening, channelizing or straightening streams and/or stream banks.
  - 1.3-7 Street sweepers, sewer cleaners, and vacuum trucks unless they support green infrastructure projects.

#### 1.4 Decision Criteria for Business Cases

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<sup>3</sup> Wetlands are those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, vernal pools, and similar areas.

- 1.4-1 Green infrastructure projects are designed to mimic the natural hydrologic conditions of the site or watershed.
- 1.4-2 Projects that capture, treat, infiltrate, or evapotranspire water on the parcels where it falls and does not result in interbasin transfers of water.
- 1.4-3 GPR project is in lieu of or to supplement municipal hard/gray infrastructure.
- 1.4-4 Projects considering both landscape and site scale will be most successful at protecting water quality.
- 1.4-5 Design criteria are available at:  
<http://cfpub.epa.gov/npdes/greeninfrastructure/munichandbook.cfm> and  
<http://cfpub.epa.gov/npdes/greeninfrastructure/technology.cfm>

## 1.5 Examples of Projects Requiring A Business Case

- 1.5-1 Fencing to keep livestock out of streams and stream buffers. Fencing must allow buffer vegetation to grow undisturbed and be placed a sufficient distance from the riparian edge for the buffer to function as a filter for sediment, nutrients and other pollutants.

## 2.0 WATER EFFICIENCY

- 2.1 Definition: EPA's WaterSense program defines water efficiency as the use of improved technologies and practices to deliver equal or better services with less water. Water efficiency encompasses conservation and reuse efforts, as well as water loss reduction and prevention, to protect water resources for the future.

## 2.2 Categorical Projects

- 2.2-1 Installing or retrofitting water efficient devices, such as plumbing fixtures and appliances
  - 2.2-1a For example -- shower heads, toilets, urinals and other plumbing devices
  - 2.2-1b Where specifications exist, WaterSense labeled products should be the preferred choice (<http://www.epa.gov/watersense/index.html>).
  - 2.2-1c Implementation of incentive programs to conserve water such as rebates.
- 2.2-2 Installing any type of water meter in previously unmetered areas
  - 2.2-2a If rate structures are based on metered use
  - 2.2-2b Can include backflow prevention devices if installed in conjunction with water meter
- 2.2-3 Replacing existing broken/malfunctioning water meters, or upgrading existing meters, with:
  - 2.2-3a Automatic meter reading systems (AMR), for example:
    - 2.2-3a(i) Advanced metering infrastructure (AMI)
    - 2.2-3a(ii) Smart meters
  - 2.2-3b Meters with built in leak detection
  - 2.2-3c Can include backflow prevention devices if installed in conjunction with water meter replacement
- 2.2-4 Retrofitting/adding AMR capabilities or leak detection equipment to existing meters (not replacing the meter itself).



- 2.2-5 Water audit and water conservation plans, which are reasonably expected to result in a capital project.
- 2.2-6 Recycling and water reuse projects that replace potable sources with non-potable sources,
  - 2.2-6a Gray water, condensate and wastewater effluent reuse systems (where local codes allow the practice)
  - 2.2-6b Extra treatment costs and distribution pipes associated with water reuse.
- 2.2-7 Retrofit or replacement of existing landscape irrigation systems with more efficient landscape irrigation systems, including moisture and rain sensing equipment.
- 2.2-8 Retrofit or replacement of existing agricultural irrigation systems with more efficient agricultural irrigation systems.
- 2.3 Projects That Do Not Meet the Definition of Water Efficiency
  - 2.3-1 Agricultural flood irrigation.
  - 2.3-2 Lining of canals to reduce water loss.
  - 2.3-3 Replacing drinking water distribution lines. This activity extends beyond CWSRF eligibility and is more appropriately funded by the DWSRF.
  - 2.3-4 Leak detection equipment for drinking water distribution systems, unless used for reuse distribution pipes.
- 2.4 Decision Criteria for Business Cases
  - 2.4-1 Water efficiency can be accomplished through water saving elements or reducing water consumption. This will reduce the amount of water taken out of rivers, lakes, streams, groundwater, or from other sources.
  - 2.4-2 Water efficiency projects should deliver equal or better services with less net water use as compared to traditional or standard technologies and practices
  - 2.4-3 Efficient water use often has the added benefit of reducing the amount of energy required by a POTW, since less water would need to be collected and treated; therefore, there are also energy and financial savings.
- 2.5 Examples of Projects Requiring a Business Case.
  - 2.5-1 Water meter replacement with traditional water meters (see AWWA M6 *Water Meters – Selection Installation, Testing, and Maintenance*).
  - 2.5-2 Projects that result from a water audit or water conservation plan
  - 2.5-3 Storage tank replacement/rehabilitation to reduce loss of reclaimed water.
  - 2.5-4 New water efficient landscape irrigation system (where there currently is not one).
  - 2.5-5 New water efficient agricultural irrigation system (where there currently is not one).

### **3.0 ENERGY EFFICIENCY**

- 3.1 Definition: Energy efficiency is the use of improved technologies and practices to reduce the energy consumption of water quality projects, use energy in a more efficient way, and/or produce/utilize renewable energy.

### 3.2 Categorical Projects

- 3.2-1 Renewable energy projects such as wind, solar, geothermal, micro-hydroelectric, and biogas combined heat and power systems (CHP) that provide power to a POTW. (<http://www.epa.gov/cleanenergy>). Micro-hydroelectric projects involve capturing the energy from pipe flow.
    - 3.2-1a POTW owned renewable energy projects can be located onsite or offsite.
    - 3.2-1b Includes the portion of a publicly owned renewable energy project that serves POTW's energy needs.
    - 3.2-1c Must feed into the grid that the utility draws from and/or there is a direct connection.
  - 3.2-2 Projects that achieve a 20% reduction in energy consumption are categorically eligible for GPR<sup>4</sup>. Retrofit projects should compare energy used by the existing system or unit process<sup>5</sup> to the proposed project. The energy used by the existing system should be based on name plate data when the system was first installed, recognizing that the old system is currently operating at a lower overall efficiency than at the time of installation. New POTW projects or capacity expansion projects should be designed to maximize energy efficiency and should select high efficiency premium motors and equipment where cost effective. Estimation of the energy efficiency is necessary for the project to be counted toward GPR. If a project achieves less than a 20% reduction in energy efficiency, then it may be justified using a business case.
  - 3.2-3 Collection system Infiltration/Inflow (I/I) detection equipment
  - 3.2-4 POTW energy management planning, including energy assessments, energy audits, optimization studies, and sub-metering of individual processes to determine high energy use areas, which are reasonably expected to result in a capital project are eligible. Guidance to help POTWs develop energy management programs, including assessments and audits is available at [http://www.epa.gov/waterinfrastructure/pdfs/guidebook\\_si\\_energymangement.p](http://www.epa.gov/waterinfrastructure/pdfs/guidebook_si_energymangement.pdf)df.
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- 3.3 Projects That Do Not Meet the Definition of Energy Efficiency
    - 3.3-1 Renewable energy generation that is *privately* owned or the portion of a publicly owned renewable energy facility that does not provide power to a POTW, either through a connection to the grid that the utility draws from and/or a direct connection to the POTW.
    - 3.3-2 Simply replacing a pump, or other piece of equipment, because it is at the end of its useful life, with something of average efficiency.
    - 3.3-3 Facultative lagoons, even if integral to an innovative treatment process.

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<sup>4</sup> The 20% threshold for categorically eligible CWSRF energy efficiency projects was derived from a 2002 Department of Energy study entitled *United States Industrial Electric Motor Systems Market Opportunities Assessment, December 2002* and adopted by the Consortium for Energy Efficiency. Further field studies conducted by Wisconsin Focus on Energy and other State programs support the threshold.

<sup>5</sup> A unit process is a portion of the wastewater system such as the collection system, pumping stations, aeration system, or solids handling, etc.

- 3.3-4 Hydroelectric facilities, except micro-hydroelectric projects. Micro-hydroelectric projects involve capturing the energy from pipe flow.
- 3.4 Decision Criteria for Business Cases
  - 3.4-1 Project must be cost effective. An evaluation must identify energy savings and payback on capital and operation and maintenance costs that does not exceed the useful life of the asset.  
[http://www.epa.gov/waterinfrastructure/pdfs/guidebook\\_si\\_energymangement.pdf](http://www.epa.gov/waterinfrastructure/pdfs/guidebook_si_energymangement.pdf)
  - 3.4-2 The business case must describe how the project maximizes energy saving opportunities for the POTW or unit process.
  - 3.4-3 Using existing tools such as Energy Star's Portfolio Manager ([http://www.energystar.gov/index.cfm?c=evaluate\\_performance.bus\\_portfolioimanager](http://www.energystar.gov/index.cfm?c=evaluate_performance.bus_portfolioimanager)) or Check Up Program for Small Systems (CUPSS) (<http://www.epa/cupss>) to document current energy usage and track anticipated savings.
- 3.5 Examples of Projects Requiring a Business Case
  - 3.5-1 POTW projects or unit process projects that achieve less than a 20% energy efficiency improvement.
  - 3.5-2 Projects implementing recommendations from an energy audit that are not otherwise designated as categorical.
  - 3.5-3 Projects that cost effectively eliminate pumps or pumping stations.
  - 3.5-4 Infiltration/Inflow (I/I) correction projects that save energy from pumping and reduced treatment costs and are cost effective.
    - 3.5-4a Projects that count toward GPR cannot build new structural capacity. These projects may, however, recover existing capacity by reducing flow from I/I.
  - 3.5-5 I/I correction projects where excessive groundwater infiltration is contaminating the influent requiring otherwise unnecessary treatment processes (i.e. arsenic laden groundwater) and I/I correction is cost effective.
  - 3.5-6 Replacing pre-Energy Policy Act of 1992 motors with National Electric Manufacturers Association (NEMA) premium energy efficiency motors.
    - 3.5-6a NEMA is a standards setting association for the electrical manufacturing industry (<http://www.nema.org/gov/energy/efficiency/premium/>).
  - 3.5-7 Upgrade of POTW lighting to energy efficient sources such as metal halide pulse start technologies, compact fluorescent, light emitting diode (LED).
  - 3.5-8 SCADA systems can be justified based upon substantial energy savings.
  - 3.5-9 Variable Frequency Drive can be justified based upon substantial energy savings.

#### **4.0 ENVIRONMENTALLY INNOVATIVE**

- 4.1 Definition: Environmentally innovative projects include those that demonstrate new and/or innovative approaches to delivering services or managing water resources in a more sustainable way.

## 4.2 Categorical Projects

- 4.2-1 Total/integrated water resources management planning likely to result in a capital project.
- 4.2-2 Utility Sustainability Plan consistent with EPA SRF's sustainability policy.
- 4.2-3 Greenhouse gas (GHG) inventory or mitigation plan and submission of a GHG inventory to a registry (such as Climate Leaders or Climate Registry)
  - 4.3-3a Note: GHG Inventory and mitigation plan is eligible for CWSRF funding.
  - 4.2-3b EPA Climate Leaders:
    - <http://www.epa.gov/climateleaders/basic/index.html>
    - Climate Registry: <http://www.theclimateregistry.org/>
- 4.2-4 Planning activities by a POTW to prepare for adaptation to the long-term effects of climate change and/or extreme weather.
  - 4.2-4a Office of Water – Climate Change and Water website:
    - <http://www.epa.gov/water/climatechange/>
- 4.2.5 Construction of US Building Council LEED certified buildings or renovation of an existing building on POTW facilities.
  - 4.2-5a Any level of certification (Platinum, Gold, Silver, Certified).
  - 4.2-5b All building costs are eligible, not just stormwater, water efficiency and energy efficiency related costs. Costs are not limited to the incremental additional costs associated with LEED certified buildings.
  - 4.2-5c U.S. Green Building Council website:
    - <http://www.usgbc.org/displaypage.aspx?CategoryID=19>
- 4.2-6 Decentralized wastewater treatment solutions to existing deficient or failing onsite wastewater systems.
  - 4.2-6a Decentralized wastewater systems include individual onsite and/or cluster wastewater systems used to collect, treat and disperse relatively small volumes of wastewater. An individual onsite wastewater treatment system is a system relying on natural processes and/or mechanical components, that is used to collect, treat and disperse or reclaim wastewater from a single dwelling or building. A cluster system is a wastewater collection and treatment system under some form of common ownership that collects wastewater from two or more dwellings or buildings and conveys it to a treatment and dispersal system located on a suitable site near the dwellings or buildings. Decentralized projects may include a combination of these systems. EPA recommends that decentralized systems be managed under a central management entity with enforceable program requirements, as stated in the *EPA Voluntary Management Guidelines*.
    - [http://www.epa.gov/owm/septic/pubs/septic\\_guidelines.pdf](http://www.epa.gov/owm/septic/pubs/septic_guidelines.pdf)
  - 4.2-6b Treatment and Collection Options: A variety of treatment and collection options are available when implementing decentralized wastewater systems. They typically include a septic tank, although many configurations include additional treatment components following or in place of the septic tank, which provide for advanced treatment solutions. Most disperse treated effluent to the soil where further treatment occurs, utilizing either conventional soil absorption fields or alternative soil dispersal methods which provide advanced treatment. Those that

discharge to streams, lakes, tributaries, and other water bodies require federal or state discharge permits (see below). Some systems promote water reuse/recycling, evaporation or wastewater uptake by plants. Some decentralized systems, particularly cluster or community systems, often utilize alternative methods of collection with small diameter pipes which can flow via gravity, pump, or siphon, including pressure sewers, vacuum sewers and small diameter gravity sewers. Alternative collection systems generally utilize piping that is less than 8 inches in diameter, or the minimum diameter allowed by the state if greater than 8 inches, with shallow burial and do not require manholes or lift stations. Septic tanks are typically installed at each building served or another location upstream of the final treatment and dispersal site. Collection systems can transport raw sewage or septic tank effluent. Another popular dispersal option used today is subsurface drip infiltration. Package plants that discharge to the soil are generally considered decentralized, depending on the situation in which they are used. While not entirely inclusive, information on treatment and collection processes is described, in detail, in the “*Onsite Wastewater Treatment Technology Fact Sheets*” section of the EPA Onsite Manual [http://www.epa.gov/owm/septic/pubs/septic\\_2002\\_osdm\\_all.pdf](http://www.epa.gov/owm/septic/pubs/septic_2002_osdm_all.pdf) and on EPA’s septic system website under Technology Fact Sheets. [http://cfpub.epa.gov/owm/septic/septic.cfm?page\\_id=283](http://cfpub.epa.gov/owm/septic/septic.cfm?page_id=283)

4.2-6c For the purposes of the CWSRF, decentralized systems are considered to be section 319 projects and Davis-Bacon does not apply.

#### 4.3 Projects That Do Not Meet the Definition of Environmentally Innovative

4.3-1 Air scrubbers to prevent nonpoint source deposition.

4.3-2 Facultative lagoons, even if integral to an innovative treatment processes.

4.3-3 Surface discharging decentralized wastewater systems where there are cost effective soil-based alternatives.

4.3-4 Higher sea walls to protect POTW from sea level rise.

4.3-5 Reflective roofs at POTW to combat heat island effect.

#### 4.4 Decision Criteria for Business Cases

4.4-1 State programs are allowed flexibility in determining what projects qualify as innovative in their state based on unique geographical or climatological conditions.

4.4-1a Technology or approach whose performance is expected to address water quality but the actual performance has not been demonstrated in the state;

4.4-1b Technology or approach that is not widely used in the State, but does perform as well or better than conventional technology/approaches at lower cost; or

4.4-1c Conventional technology or approaches that are used in a new application in the State.

#### 4.5 Examples of Projects Requiring a Business Case

- 4.5-1 Constructed wetlands projects used for municipal wastewater treatment, polishing, and/or effluent disposal.
  - 4.5-1a Natural wetlands, as well as the restoration/enhancement of degraded wetlands, may not be used for wastewater treatment purposes and must comply with all regulatory/permitting requirements.
  - 4.5-1b Projects may not (further) degrade natural wetlands.
- 4.5-2 Projects or components of projects that result from total/integrated water resource management planning consistent with the decision criteria for environmentally innovative projects and that are Clean Water SRF eligible.
- 4.5-3 Projects that facilitate adaptation of POTWs to climate change identified by a carbon footprint assessment or climate adaptation study.
- 4.5-4 POTW upgrades or retrofits that remove phosphorus for beneficial use, such as biofuel production with algae.
- 4.5-5 Application of innovative treatment technologies or systems that improve environmental conditions and are consistent with the Decision Criteria for environmentally innovative projects such as:
  - 4.5-5a Projects that significantly reduce or eliminate the use of chemicals in wastewater treatment;
  - 4.5-5b Treatment technologies or approaches that significantly reduce the volume of residuals, minimize the generation of residuals, or lower the amount of chemicals in the residuals. (National Biosolids Partnership, 2010; *Advances in Solids Reduction Processes at Wastewater Treatment Facilities Webinar*; [http://www.e-wef.org/timssnet/meetings/tnt\\_meetings.cfm?primary\\_id=10CAP2&Action=LONG&subsystem=ORD%3cbr\).](http://www.e-wef.org/timssnet/meetings/tnt_meetings.cfm?primary_id=10CAP2&Action=LONG&subsystem=ORD%3cbr).)
  - 4.5-5b(i) Includes composting, class A and other sustainable biosolids management approaches.
- 4.5-6 Educational activities and demonstration projects for water or energy efficiency.
- 4.5-7 Projects that achieve the goals/objectives of utility asset management plans ([http://www.epa.gov/safewater/smallsystems/pdfs/guide\\_smallsystems\\_assetmanagement\\_bestpractices.pdf](http://www.epa.gov/safewater/smallsystems/pdfs/guide_smallsystems_assetmanagement_bestpractices.pdf); <http://www.epa.gov/owm/assetmanage/index.htm>).
- 4.5-8 Sub-surface land application of effluent and other means for ground water recharge, such as spray irrigation and overland flow.
  - 4.5-8a Spray irrigation and overland flow of effluent is not eligible for GPR where there is no other cost effective alternative.

### **Business Case Development**

**This guidance is intended to be comprehensive: however, EPA understands our examples projects requiring a business case may not be all inclusive. A business case is a due diligence document. For those projects, or portions of projects, which are not included in the categorical projects lists provided above, a business case will be required to demonstrate that an assistance recipient has thoroughly researched anticipated ‘green’ benefits of a project. Business cases will be approved by the State (see section IV.A.a. in the *Procedures for Implementing Certain Provisions of EPA’s Fiscal Year 2012 Appropriations Affecting the Clean Water and Drinking Water State Revolving Fund Programs*). An**

**approved business case must be included in the State's project files and contain clear documentation that the project achieves identifiable and substantial benefits. The following sections provide guidelines for business case development.**

- 5.0 Length of a Business Case
  - 5.0-1 Business cases must address the decision criteria for the category of project
  - 5.0-2 Business cases should be adequate, but not exhaustive.
    - 5.0-2a There are many formats and approaches. EPA does not require any specific one.
    - 5.0-2b Some projects will require detailed analysis and calculations, while others many not require more than one page.
    - 5.0-2c Limit the information contained in the business case to only the pertinent 'green' information needed to justify the project.
  - 5.0-3 A business case can simply summarize results from, and then cite, existing documentation – such as engineering reports, water or energy audits, results of water system tests, etc.
- 5.1 Content of a Business Case
  - 5.1-1 Quantifiable water and/or energy savings or water loss reduction for water and energy efficiency projects should be included.
  - 5.1-2 The cost and financial benefit of the project should be included, along with the payback time period where applicable. (NOTE: Clean Water SRF requires energy efficiency projects to be cost effective.)
- 5.2 Items Which Strengthen Business Case, but Are Not Required
  - 5.2-1 Showing that the project was designed to enable equipment to operate most efficiently.
  - 5.2-2 Demonstrating that equipment will meet or exceed standards set by professional associations.
  - 5.2-3 Including operator training or committing to utilizing existing tools such as Energy Star's Portfolio Manager or CUPSS for energy efficiency projects.
- 5.3 Example Business Cases Are Available at <http://www.srfbusinesscases.net/>

**Attachment 3**  
**DRAFT FY 2012 CWSRF Additional Subsidization and Green Project Reserve Requirements**

	FY 2012 Capitalization Grant (Allotment Less 604(b)) <sup>1</sup>	Additional Subsidization <sup>2</sup>		Green <sup>3</sup>
		Minimum Amount that must be provided as Additional Subsidization	Maximum Amount that may be provided as Additional Subsidization	Minimum Amount that must be provided for Green Projects
<b>Region 1</b>				
Connecticut	\$17,314,000	\$982,249	\$1,443,374	\$1,731,400
Maine	\$10,940,000	\$608,006	\$912,008	\$1,094,000
Massachusetts	\$47,985,000	\$2,666,832	\$4,000,249	\$4,798,500
New Hampshire	\$14,123,000	\$784,905	\$1,177,358	\$1,412,300
Rhode Island	\$9,486,000	\$527,198	\$790,796	\$948,600
Vermont	\$6,908,000	\$383,922	\$575,882	\$690,800
<b>Region 2</b>				
New Jersey	\$57,755,000	\$3,209,814	\$4,814,720	\$5,775,500
New York	\$156,001,000	\$8,669,970	\$13,004,955	\$15,600,100
Puerto Rico	\$18,434,000	\$1,024,495	\$1,536,742	\$1,843,400
<b>Region 3</b>				
Delaware	\$6,908,000	\$383,922	\$575,882	\$690,800
Maryland	\$34,183,000	\$1,899,767	\$2,849,651	\$3,418,300
Pennsylvania	\$55,884,000	\$3,111,388	\$4,667,082	\$5,598,400
Virginia	\$28,924,000	\$1,607,491	\$2,411,237	\$2,892,400
West Virginia	\$22,031,000	\$1,224,403	\$1,836,605	\$2,203,100
<b>Region 4</b>				
Alabama	\$15,803,000	\$878,273	\$1,317,410	\$1,580,300
Florida	\$47,707,000	\$2,651,382	\$3,977,073	\$4,770,700
Georgia	\$23,896,000	\$1,328,053	\$1,992,080	\$2,389,600
Kentucky	\$17,987,000	\$999,652	\$1,499,478	\$1,798,700
Mississippi	\$12,733,000	\$707,654	\$1,061,481	\$1,273,300
North Carolina	\$25,507,000	\$1,417,587	\$2,126,380	\$2,550,700
South Carolina	\$14,479,000	\$804,690	\$1,207,036	\$1,447,900
Tennessee	\$20,631,000	\$1,141,039	\$1,711,558	\$2,053,100
<b>Region 5</b>				
Illinois	\$63,919,000	\$3,552,386	\$5,328,580	\$6,391,900
Indiana	\$34,061,000	\$1,892,987	\$2,839,480	\$3,406,100
Michigan	\$60,770,000	\$3,377,376	\$5,068,065	\$6,077,000
Minnesota	\$25,977,000	\$1,443,708	\$2,165,561	\$2,597,700
Ohio	\$79,564,000	\$4,421,879	\$6,632,818	\$7,956,400
Wisconsin	\$38,208,000	\$2,123,462	\$3,185,193	\$3,820,800
<b>Region 6</b>				
Arkansas	\$9,239,000	\$513,470	\$770,205	\$923,900
Louisiana	\$15,537,000	\$863,490	\$1,295,235	\$1,553,700
New Mexico	\$6,908,000	\$383,922	\$575,882	\$690,800
Oklahoma	\$11,419,000	\$634,627	\$951,940	\$1,141,900
Texas	\$64,597,000	\$3,590,067	\$5,385,101	\$6,459,700
<b>Region 7</b>				
Iowa	\$19,128,000	\$1,063,065	\$1,594,597	\$1,912,800
Kansas	\$12,757,000	\$708,988	\$1,063,482	\$1,275,700
Missouri	\$39,179,000	\$2,177,427	\$3,266,140	\$3,917,900
Nebraska	\$7,202,000	\$400,261	\$600,392	\$720,200
<b>Region 8</b>				
Colorado	\$11,305,000	\$628,291	\$942,436	\$1,130,500
Montana	\$6,908,000	\$383,922	\$575,882	\$690,800
North Dakota	\$6,908,000	\$383,922	\$575,882	\$690,800
South Dakota	\$6,908,000	\$383,922	\$575,882	\$690,800
Utah	\$7,422,000	\$412,488	\$618,732	\$742,200
Wyoming	\$6,908,000	\$383,922	\$575,882	\$690,800
<b>Region 9</b>				
Arizona	\$9,542,000	\$530,310	\$795,465	\$954,200
California	\$101,080,000	\$5,617,660	\$8,426,490	\$10,108,000
Hawaii	\$10,946,000	\$608,339	\$912,509	\$1,094,600
Nevada	\$8,908,000	\$383,922	\$575,882	\$8,908,000
<b>Region 10</b>				
Alaska	\$8,444,000	\$469,287	\$703,930	\$844,400
Idaho	\$6,908,000	\$383,922	\$575,882	\$690,800
Oregon	\$15,966,000	\$887,332	\$1,330,999	\$1,596,600
Washington	\$24,578,000	\$1,365,956	\$2,048,934	\$2,457,600
<b>Total</b>	<b>\$1,384,815,000</b>	<b>\$76,963,000</b>	<b>\$115,444,500</b>	<b>\$138,481,500</b>
<b>Total Amount Applicable to the Additional Subsidization Requirement</b>	<b>\$384,815,000</b>			

1. Does not include DC and the Territories (American Samoa, Guam, Northern Marianas, and the Virgin Islands).

2. Not less than 20% but not more than 30% of the funds made available to each State for CWSRF capitalization grants shall be used by the State to provide additional subsidy to eligible recipients in the form of forgiveness of principal, negative interest loans, or grants. However, this requirement only applies to the portion of the CWSRF capitalization grant appropriation that exceeds \$1 Billion.

3. To the extent that there are sufficient eligible projects, not less than 10% of the funds made available to each State for CWSRF capitalization grants shall be used by the State for projects to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities.



**Attachment 4A**  
**Distribution of Drinking Water SRF Appropriation**  
**2012 DWSRF Allotment based on 2007 DWINSR Results**  
**Based on Appropriation of \$917,892,000**

State	Capitalization Grant		State	Capitalization Grant	
	State Grant	% of Funds Available to States		State Grant	% of Funds Available to States
Alabama	\$11,125,000	1.24%	Nevada	\$8,975,000	1.00%
Alaska	\$8,975,000	1.00%	New Hampshire	\$8,975,000	1.00%
Arizona	\$18,026,000	2.01%	New Jersey	\$19,174,000	2.14%
Arkansas	\$13,582,000	1.51%	New Mexico	\$8,975,000	1.00%
California	\$83,957,000	9.35%	New York	\$59,138,000	6.59%
Colorado	\$15,920,000	1.77%	North Carolina	\$23,537,000	2.62%
Connecticut	\$8,975,000	1.00%	North Dakota	\$8,975,000	1.00%
Delaware	\$8,975,000	1.00%	Ohio	\$28,839,000	3.21%
Florida	\$29,306,000	3.27%	Oklahoma	\$11,151,000	1.24%
Georgia	\$21,208,000	2.36%	Oregon	\$8,975,000	1.00%
Hawaii	\$8,975,000	1.00%	Pennsylvania	\$26,297,000	2.93%
Idaho	\$8,975,000	1.00%	Puerto Rico	\$8,975,000	1.00%
Illinois	\$33,879,000	3.77%	Rhode Island	\$8,975,000	1.00%
Indiana	\$14,970,000	1.67%	South Carolina	\$8,975,000	1.00%
Iowa	\$15,322,000	1.71%	South Dakota	\$8,975,000	1.00%
Kansas	\$10,981,000	1.22%	Tennessee	\$9,975,000	1.11%
Kentucky	\$12,956,000	1.44%	Texas	\$57,041,000	6.36%
Louisiana	\$16,962,000	1.89%	Utah	\$8,975,000	1.00%
Maine	\$8,975,000	1.00%	Vermont	\$8,975,000	1.00%
Maryland	\$13,926,000	1.55%	Virginia	\$15,215,000	1.70%
Massachusetts	\$16,732,000	1.86%	Washington	\$22,914,000	2.55%
Michigan	\$27,263,000	3.04%	West Virginia	\$8,975,000	1.00%
Minnesota	\$15,062,000	1.68%	Wisconsin	\$15,474,000	1.72%
Mississippi	\$9,341,000	1.04%	Wyoming	\$8,975,000	1.00%
Missouri	\$17,348,000	1.93%			
Montana	\$8,975,000	1.00%	District of Columbia	\$8,975,000	1.00%
Nebraska	\$8,975,000	1.00%	Other Areas *	\$13,463,000	1.50%

**Total Funds Available to States \$ 897,534,000**

**National Set-Asides**

American Indian & Alaska Native Water Systems **	\$18,358,000
Health Effects Studies	\$0
Small Systems Technical Assistance	\$0
Monitoring for Unregulated Contaminants	\$2,000,000
Operator Certification Reimbursement	\$0

**Total SRF Appropriation \$ 917,892,000**

\* Other Areas include: the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands. This percentage was changed in FY 2010 appropriations language from 0.33% to 1.5% of the amount available to States. This language carries forward in subsequent appropriations.

\*\* The percentage for the national set-aside for American Indian and Alaska Native Water Systems was changed from 1.5% to 2.0% of the amount appropriated in FY 2010 appropriations language. This language carries forward in subsequent appropriations.

## Attachment 4B

### DWSRF FY2012 Additional Subsidization Amounts

State	Minimum Amount that must be provided as Additional Subsidization (20%)	Maximum Amount that may be provided as Additional Subsidization (30%)	State	Minimum Amount that must be provided as Additional Subsidization (20%)	Maximum Amount that may be provided as Additional Subsidization (30%)
Alabama	\$ 2,225,000	\$ 3,337,500	Nevada	\$ 1,795,000	\$ 2,692,500
Alaska	\$ 1,795,000	\$ 2,692,500	New Hampshire	\$ 1,795,000	\$ 2,692,500
Arizona	\$ 3,605,200	\$ 5,407,800	New Jersey	\$ 3,834,800	\$ 5,752,200
Arkansas	\$ 2,716,400	\$ 4,074,600	New Mexico	\$ 1,795,000	\$ 2,692,500
California	\$ 16,791,400	\$ 25,187,100	New York	\$ 11,827,600	\$ 17,741,400
Colorado	\$ 3,184,000	\$ 4,776,000	North Carolina	\$ 4,707,400	\$ 7,061,100
Connecticut	\$ 1,795,000	\$ 2,692,500	North Dakota	\$ 1,795,000	\$ 2,692,500
Delaware	\$ 1,795,000	\$ 2,692,500	Ohio	\$ 5,767,800	\$ 8,651,700
Florida	\$ 5,861,200	\$ 8,791,800	Oklahoma	\$ 2,230,200	\$ 3,345,300
Georgia	\$ 4,241,600	\$ 6,362,400	Oregon	\$ 1,795,000	\$ 2,692,500
Hawaii	\$ 1,795,000	\$ 2,692,500	Pennsylvania	\$ 5,259,400	\$ 7,889,100
Idaho	\$ 1,795,000	\$ 2,692,500	Puerto Rico	\$ 1,795,000	\$ 2,692,500
Illinois	\$ 6,775,800	\$ 10,163,700	Rhode Island	\$ 1,795,000	\$ 2,692,500
Indiana	\$ 2,994,000	\$ 4,491,000	South Carolina	\$ 1,795,000	\$ 2,692,500
Iowa	\$ 3,064,400	\$ 4,596,600	South Dakota	\$ 1,795,000	\$ 2,692,500
Kansas	\$ 2,196,200	\$ 3,294,300	Tennessee	\$ 1,995,000	\$ 2,992,500
Kentucky	\$ 2,591,200	\$ 3,886,800	Texas	\$ 11,408,200	\$ 17,112,300
Louisiana	\$ 3,392,400	\$ 5,088,600	Utah	\$ 1,795,000	\$ 2,692,500
Maine	\$ 1,795,000	\$ 2,692,500	Vermont	\$ 1,795,000	\$ 2,692,500
Maryland	\$ 2,785,200	\$ 4,177,800	Virginia	\$ 3,043,000	\$ 4,564,500
Massachusetts	\$ 3,346,400	\$ 5,019,600	Washington	\$ 4,582,800	\$ 6,874,200
Michigan	\$ 5,452,600	\$ 8,178,900	West Virginia	\$ 1,795,000	\$ 2,692,500
Minnesota	\$ 3,012,400	\$ 4,518,600	Wisconsin	\$ 3,094,800	\$ 4,642,200
Mississippi	\$ 1,868,200	\$ 2,802,300	Wyoming	\$ 1,795,000	\$ 2,692,500
Missouri	\$ 3,469,600	\$ 5,204,400			
Montana	\$ 1,795,000	\$ 2,692,500			
Nebraska	\$ 1,795,000	\$ 2,692,500			



## Attachment 5

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAY 20 2011

OFFICE OF  
WATER

### MEMORANDUM

**SUBJECT:** Application of Davis-Bacon Act Wage Requirements to FY 2011 Clean Water and Drinking Water State Revolving Fund Assistance Agreements

**FROM:** James A. Hanlon, Director  
Office of Wastewater Management (4201M)

Cynthia C. Dougherty, Director  
Office of Groundwater and Drinking Water (4601M)

**TO:** Water Management Division Directors  
Regions I-X

This is to advise that the Davis-Bacon Act wage requirements apply to all assistance provided by the Clean Water Act State Revolving Fund and the Safe Drinking Water Act State Revolving Fund through September 30, 2011.

On April 15, 2011, the President signed the Department of Defense and Full-Year Continuing Appropriations Act, 2011, P.L. 112-10 (the final FY 2011 Continuing Resolution (CR)). This law extends funding for both the Clean Water State Revolving Fund (CWSRF) and the Drinking Water State Revolving Fund (DWSRF) through September 30, 2011.

As you are aware, language in the FY 2010 Appropriations Act, P.L. 111-88, "Making Appropriations for the Department of Interior, Environment, and Related Agencies for the Fiscal Year Ending September 30, 2010," required states to include in all assistance agreements executed on or after October 30, 2010, for the construction of treatment works under the CWSRF or for any construction under the DWSRF, a provision requiring the application of the Davis-Bacon Act requirements for the entirety of the construction activities financed by the assistance agreement through the completion of construction, no matter when construction commences. This requirement was to continue through FY 2010, which ended on September 30, 2010.

The FY 2011 Full-Year Continuing Appropriations Act directs the Agency to continue implementing the provisions specified in the FY 2010 Appropriation Act in FY 2011 unless expressly directed otherwise in the final FY 2011 CR. The final FY 2011 CR includes the following language in Section 1101(a): "Such amounts [are appropriated] as may be necessary, at the level specified in subsection (c) and *under the authority and conditions provided in applicable appropriations Acts for fiscal year 2010*, for projects and activities . . . for which

## Attachment 5

appropriations, funds, or other authority were made available in . . . The Department of Interior, Environment, and Related Agencies Appropriations Act, 2010 (division A of Public Law 111-88)."(emphasis added). This language requires the Agency to carry forward the conditions that were applicable to the FY10 SRF appropriated funds. In addition, section 1104 of the final FY 2011 CR states that "[e]xcept as otherwise expressly provided in this division [Division B], the requirements, authorities, conditions, limitations, and other provisions of the appropriations Acts referred to in section 1101(a) shall continue in effect through the date specified in section 1106 [September 30, 2011]." The language in Division B of the final FY 2011 CR appropriates funds for the SRF capitalization grants at a lower amount for FY11 than provided in FY 2010. But, the final FY 2011 CR – specifically, Division B – does not expressly alter the SRF provisions of the FY 2010 Appropriation Act concerning the tribal and territorial set-asides, additional subsidy, Green Project Reserve, or Davis-Bacon. After consultation with the Office of General Council, we have determined that the above cited provisions in the FY 2011 Full-Year Continuing Appropriation require the Agency to carry forward the conditions that were made applicable by the language of the FY 2010 Appropriations Act through FY 2011. Therefore, all assistance agreements entered into during the time period covered by the Continuing Resolution must include the application of Davis-Bacon requirements.

Please contact either of us or have your staff contact Jordan Dorfman at (202) 564-0614 if you have questions.

## Attachment 5



### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, D.C. 20460

NOV 3 0 2009

OFFICE OF  
WATER

#### MEMORANDUM

**SUBJECT:** Application of Davis-Bacon Act Wage Requirements to Fiscal Year 2010 Clean Water State Revolving Fund and Drinking Water State Revolving Fund Assistance Agreements

**FROM:** Peter S. Silva *Michael Higgins for*  
Assistant Administrator

**TO:** Water Management Division Directors  
Regions I - X

On October 30, 2009, P.L. 111-88, "Making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes," was enacted. This law provides appropriations for both the Clean Water State Revolving Fund (CWSRF) and the Drinking Water State Revolving Fund (DWSRF) for Fiscal Year 2010, while adding new requirements to these already existing programs. One new requirement, and the focus of this memorandum, requires the application of Davis-Bacon Act requirements.

P.L. 111-88 includes the following language in Title II under the heading, "Administrative Provisions, Environmental Protection Agency,"

For fiscal year 2010 the requirements of section 513 of the Federal Water Pollution Control Act (33 U.S.C. 1372) shall apply to the construction of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund as authorized by title VI of that Act (33 U.S.C. 1381 et seq.), or with assistance made available under section 205(m) of that Act (33 U.S.C. 1285(m)), or both.

For fiscal year 2010 the requirements of section 1450(e) of the Safe Drinking Water Act (42 U.S.C. 300j-9(e)) shall apply to any construction project carried out in whole or in part with assistance made available by a drinking water treatment revolving loan fund as authorized by section 1452 of that Act (42 U.S.C. 300j-12).

In order to comply with this provision, States must include in all assistance agreements, whether in the form of a loan, bond purchase, grant, or any other vehicle to provide financing for a project, executed on or after October 30, 2009 (date of enactment of P.L. 111-88), and prior to

## Attachment 5

2

October 1, 2010, for the construction of treatment works under the CWSRF or for any construction under the DWSRF, a provision requiring the application of Davis-Bacon Act requirements for the entirety of the construction activities financed by the assistance agreement through completion of construction, no matter when construction commences.

Application of the Davis-Bacon Act requirements extend not only to assistance agreements funded with Fiscal Year 2010 appropriations, but to all assistance agreements executed on or after October 30, 2009 and prior to October 1, 2010, whether the source of the funding is prior year's appropriations, state match, bond proceeds, interest earnings, principal repayments, or any other source of funding so long as the project is financed by an SRF assistance agreement. If a project began construction prior to October 30, 2009, but is financed or refinanced through an assistance agreement executed on or after October 30, 2009 and prior to October 1, 2010, Davis-Bacon Act requirements will apply to all construction that occurs on or after October 30, 2009, through completion of construction.

Notably, there is no application of the Davis-Bacon Act requirements where such a refinancing occurs for a project that has completed construction prior to October 30, 2009. This provision does not apply to any project for which an assistance agreement was executed prior to October 30, 2009, no matter when construction occurs.

Further information may be provided in the form of "Questions and Answers" if necessary.

We fully understand the complexity of this provision and the difficulties involved in its application. If you have any question, please contact us, or have your staff contact Jordan Dorfman, Attorney-Advisor, State Revolving Fund Branch, Municipal Support Division, at (202) 564-0614, or Philip Metzger, Attorney-Advisor, Infrastructure Branch, Drinking Water Protection Division, at (202) 564-3776.

## ATTACHMENT 6

### Wage Rate Requirements Under FY 2012 Appropriations Act

#### Preamble

With respect to the Clean Water and Safe Drinking Water State revolving Funds, EPA provides capitalization grants to each State which in turn provides subgrants or loans to eligible entities within the State. Typically, the subrecipients are municipal or other local governmental entities that manage the funds. For these types of recipients, the provisions set forth under Roman Numeral I, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section 3(ii)(A), below and for compliance as described in Section I-5.

Occasionally, the subrecipient may be a private for profit or not for profit entity. For these types of recipients, the provisions set forth in Roman Numeral II, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section II-3(ii)(A), below and for compliance as described in Section II-5.

#### **I. Requirements under FY 2012 Appropriations Act For Subrecipients That Are Governmental Entities:**

The following terms and conditions specify how recipients will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under the FY 2012 Appropriations Act with respect to State recipients and subrecipients that are governmental entities. If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient. If a State recipient needs guidance, the recipient may contact (insert name or organizational unit Regional EPA DB contact) for guidance. The recipient or subrecipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/esa/whd/recovery/>

#### **1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.**

Under the FY 2012 Appropriations Act, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the recipient State before authorizing work on that site.

## **2. Obtaining Wage Determinations.**

(a) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

- (i) While the solicitation remains open, the subrecipient shall monitor [www.wdol.gov](http://www.wdol.gov) weekly to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.
- (ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from [www.wdol.gov](http://www.wdol.gov) into the ordering instrument.

(c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.



### **3. Contract and Subcontract provisions.**

(a) The Recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2012 Appropriations Act, the following clauses:

#### **(1) Minimum wages.**

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, [www.dol.gov](http://www.dol.gov).

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The

State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the

Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social

security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the

required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not

less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

#### **4. Contract Provision for Contracts in Excess of \$100,000.**

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The subrecipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for

unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

## **5. Compliance Verification**

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the subrecipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates.



The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.

## **II. Requirements under FY 2012 Appropriations Act For Subrecipients That Are Not Governmental Entities**

The following terms and conditions specify how recipients will assist EPA in meeting its DB responsibilities when DB applies to EPA awards of financial assistance under the FY2011 Full-Year Continuing Appropriation Act with respect to subrecipients that are not governmental entities. If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient for guidance. If a State recipient needs guidance, the recipient may contact (insert name or organizational unit Regional EPA DB contact) for guidance. The recipient or subrecipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/esa/whd/recovery/>

**Under these terms and conditions, the subrecipient must submit its proposed DB wage determinations to the State recipient for approval prior to including the wage determination in any solicitation, contract task orders, work assignments, or similar instruments to existing contractors.**

### **1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.**

Under the FY 2011 Full-Year Continuing Appropriation, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking

water treatment revolving loan fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the recipient State before authorizing work on that site.

## **2. Obtaining Wage Determinations.**

(a) Subrecipients must obtain proposed wage determinations for specific localities at [www.wdol.gov](http://www.wdol.gov). After the Subrecipient obtains its proposed wage determination, it must submit the wage determination to (insert contact information for State recipient DB point of contact for wage determination) for approval prior to inserting the wage determination into a solicitation, contract or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments unless subsequently directed otherwise by the State recipient Award Official.

(b) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

- (i) While the solicitation remains open, the subrecipient shall monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.
- (ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(c) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from [www.wdol.gov](http://www.wdol.gov) into the ordering instrument.

(c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

### **3. Contract and Subcontract provisions.**

(a) The Recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2011 Full-Year Continuing Appropriation, the following clauses:

#### **(1) Minimum wages.**

(i) All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3) ), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein:

Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, [www.dol.gov](http://www.dol.gov).

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient(s) to the State award official. The State award official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request, and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The subrecipient(s) shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### (4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid

fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.



(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

#### **4. Contract Provision for Contracts in Excess of \$100,000.**

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor

responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The subrecipient shall upon the request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

## **5. Compliance Verification**

(a). The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent

documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the subrecipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c). The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB . In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d). The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.

## Attachment 7: CWSRF Benefits Reporting Data Elements

Environmental Benefits Data Fields	Required/Optional
Borrower	required
Loan Execution Date	required
Tracking #	required
Other Tracking Number	optional
Assistance Type	required
Effective Interest Rate	required
Incremental Funding	optional
Phase #	optional
Original Tracking #	optional
CWSRF Assistance Amount	required
Repayment Period	required
Final Amount (checkbox)	required
% Funded by CWSRF	required
Same Environmental Results checkbox	optional
CWSRF Total From All Projects	required
Check if loan funds one or more NPS project(s)	required
Total NPS projects	required
CW Needs Survey Number	optional
If applicable, the number of NPS projects	required
Project Description	required
Facility Name	required
Population Served By the Project	required
Population Served By the System	required
Wastewater Volume (Design Flow) for the project	required
Wastewater Volume (Design Flow) for the system	required
Wastewater Volume (Design Flow) eliminated/conserved by this project	required
Needs Categories	required
Discharge Affected	required
NPDES Permit Number/No NPDES Permit	required
Other Permit Type	optional
Other Permit Number	optional
Waterbody Name (Primary Impacted)	required
Waterbody ID (Primary Impacted)	optional
Waterbody Name (Other Impacted)	optional
Waterbody ID (Other Impacted)	optional
Receiving Waterbody	required
State Waterbody ID	optional
Project Location (lat/long)	optional
Contributes to Water Quality...Improvement/Maintenance	required
Allows the System to... Achieve Compliance/Maintain Compliance	required
Affected Waterbody is... Impaired/Meeting Standards	required
Allows the System to Address... existing TMDL/Projected TMDL/Watershed Management Plan	required
Designated Surface Water Uses	required
Other Uses and Outcomes	optional
Project Comments	optional

Attachment 8: DWSRF Project Benefits Reporting Data Elements	
Project Benefits Data Fields	Required/Option
Borrower	required
Loan Execution Date	required
PWSID Number	required
Tracking number	required
Other tracking number	optional
Assistance Type	required
Loan Interest Rate	required
State Market Interest Rate	optional
Loan Term	optional
Incremental Funding	optional
Phase #	optional
Original Tracking Number	optional
Same Health Benefits	optional
Total Assistance (Initial Amount)	required
Total Assistance (Final Amount)	required
Additional Subsidy Provided	required 2010-2012
Grant Amount \$	required 2010-2012
Negative Interest Amount \$	required 2010-2012
Principal Forgiveness Amount \$	required 2010-2012
Net Loan Amount	optional
Funding is complete and funded amount has changed from initial amount	required 2010-2012
Based on states criteria, could the borrower have afforded the project without additional subsidy provided	required 2010-2012
% Funded By DWSRF	optional
Disadvantaged Assistance	required
IUP Year	optional
Assistance applies to _ grant year requirements	required
System Name	required
System Type	required
Ownership Type	optional
Age of System	optional
Project Name	required
Project Description	required
Project Purpose	required
Number of Projects Funded	required
Public Health Impact Description	required
Other Project Comments	optional
Project Start Date	required
Project Completion Date	required
Project Consolidates Systems	required
Number of System Eliminated	optional
Project Creates New Systems	required
Population Served by the project	optional

Project Benefits Data Fields	Required/Option
Population Served by the system	required
Borrower Population	optional
Number of connection by the project	optional
Number of connections by the system	optional
Counties Served Primary	optional
Other County 1	optional
Other County 2	optional
Address Line 1	required
Address Line 2	optional
City, State, Zip Code	required
Congressional District	optional
Project Includes Green Project Reserve	required
Green Infrastructure Amount	required if green
Energy Efficiency Amount	required if green
Water Efficiency Amount	required if green
Green Innovative Amount	required if green
Amount of additional subsidy provided used too fund GPR.	required if green 2010 - 2012
NIMS project categories (Transmission, Treatment, etc...)	required
Compliance Objectives	optional
State set-aside information recipient	required
State set-aside Funding Amount	required
State set-aside Funding type	required
Grant number	required
Grant Award date	required
State Organization receiving grant	required
This list does not include FFATA requirements	

## Attachment 7

Non-Point Source Projects  
and Green Project Reserve  
FFY 2011 Federal Appropriations Act

The FFY 2011 Federal appropriation to the Clean Water State Revolving Fund programs provides \$13,328,000 for water quality projects through the Kansas Water Pollution Control Revolving Fund. KDHE proposes to reserve no less than twenty percent (\$2,665,600) of this funding toward projects that will qualify toward the Green Project Reserve (GPR). To the extent possible, KDHE will fulfill GPR requirements through Non-Point Source projects, or components of projects, that will manage and treat stormwater on site, maintain or restore the natural hydrology of an area, and demonstrate more sustainable water management. Non-Point Source projects are projects implemented under 319 authority and designed to control pollution from a non-point source as identified in the pollutant source categories of the Kansas Non-Point Source Pollution Management Plan, 2010 update. Non-Point Source projects implemented under 319 authority cannot serve to fulfill requirements of National Pollutant Discharge Elimination System General Permits.

The FFY 2011 program builds on the initial successes of the American Recovery and Reinvestment Act (ARRA) funding and the FFY 2010 efforts. Several previously developed non-point source / green infrastructure projects had applied for ARRA funding and these and other projects will now receive funding from the FFY 2011 program with funding amounts and principal forgiveness amounts similar to the ARRA funding program. These projects to be funded and the estimated costs are:

<b>Project:</b>	<b>Total \$:</b>
Glacial Hills RC&D – Wolf River	
Loan Amount	\$153,264
Green Project Reserve	\$153,264
Principal Forgiveness	\$153,264
 Kansas Water Office – Smoky Hill River	
Loan Amount	\$300,480
Green Project Reserve	\$300,480
Principal Forgiveness	\$300,480
 Kansas Water Office – Cottonwood River, Ph. 2	
Loan Amount	\$1,310,652
Green Project Reserve	\$1,310,652
Principal Forgiveness	\$1,310,652
 University of Kansas	
Loan Amount	\$450,000
Green Project Reserve	\$450,000
Principal Forgiveness	\$450,000

## Glacial Hills RC&amp;D – Delaware River, Ph. 4

Loan Amount	\$451,204
Green Project Reserve	\$451,204
Principal Forgiveness	\$451,204

Given the recent and anticipated reduction in the federal funds available for principal forgiveness, no additional loans will be provided with principal forgiveness after February 23, 2012.

Projects funded with FFY 2010 and FFY 2011 funds must have an environmental review and must comply with all applicable state and federal regulations including Disadvantaged Business Enterprise solicitation. Davis-Bacon Act requirements apply only to the construction of "treatment works" as defined by the Clean Water Act and EPA and therefore will not be applicable to non-point source pollution control projects implemented under 319 authority. Buy American and the requirements for Jobs Created/Retained reporting, which applied to 2009 ARRA funds, will not be applicable to FFY 2010 and 2011 funding. Additional information on eligible projects and applicants, how to submit an application, and other program details will be posted at <http://www.kdheks.gov/nps/> in the near future.

The additional projects selected to receive FFY 2011 funding for non-point source projects will be presented for public comment in the public hearing to be held April 3, 2012.



APPENDIX H  
Estimated Service Fee Income From the FFY 2012 Capitalization Grant

Est. Program Income Earned During the Grant Period – 07/01/11 – 06/30/17 \$90,000

Est. Program Income Earned After the Grant Period – 07/01/17 – 06/30/32 \$243,000

Est. Non-Program Income Earned From the FFY 2012 Capitalization Grant - \$0

Prepared by  
Rod Geisler  
02/29/12

K.A.R. 28-16-113 establishes the method for the KWPCRF to collect service fees for administration costs of the KWPCRF. A portion of the interest rate charges of the loans, 0.25%, is collected as a service fee. The (gross) interest rates on the loans are established in accordance with K.A.R. 28-16-133.